Supreme Court, U.S.
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No. _____

In The
Supreme Court Of The United States

ROGER EMERICK,
Petitioner,

v.

UNITED TECHNOLOGIES CORPORATION,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF CONNECTICUT

PETITION FOR WRIT OF CERTIORARI

Pro Se Petitioner:

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QUESTION PRESENTED

In response to, and compliance with, Federal Regulation and Presidential Executive Order, intended to improve defense contractor integrity and the public perception of integrity, major defense contractors have created codes of ethics, an open work atmosphere, ombudsmen offices and communication programs run by ombudsmen, all of which are intended to provide forums and a work environment where defense employees can express concerns with business policies and practices without fear of retaliation. Also, pursuant to these government requirements, millions of defense sector employees are trained, invited, and encouraged to utilize this open work environment and ombudsman communication forums to safely express concerns. The federal government has emphasized the need for such an open atmosphere and communication forums to improve defense contractor integrity for the good of the nation.

Should speech by defense sector employees within the open work environment and/or within ombudsman communication forums, (both pursuant to defense contractor Codes of Ethics as required by federal regulation and Executive Order), and which speech is invited and within the scope of the invitation, be protected: 1) as a matter of public policy and/or 2) under the First Amendment?

PARTIES TO THE CASE

Petitioner/Plaintiff:

Roger Emerick, 580 Hopewell Rd., S. Glastonbury, CT 06073

Respondent & Other Named Defendants

United Technologies Corporation, (UTC has no parent company)

*Robert Kuhn, President, Hamilton Std Div of UTC

*Frederick Morris, VP, Hamilton Std Div of UTC

*Individual Defendants were named in claims not petitioned.

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OPINIONS BELOW

The Connecticut Superior Court struck the two counts concerning this petition from petitioner's Complaint Rev F (A35) by unpublished Memorandum of Decision on 6-14-95 (A13). A repleading, Rev G (A40), was struck without memorandum 8-31-95. The Appellate Court affirmed by written opinion on 4-20-99 (Emerick v. Kuhn et al, 52 Conn. App. 724 [A.C. 16412]). Applicable text is in A1. The Connecticut Supreme Court denied petitioner's Petition for Certification, without comment, on 7-7-99 (No. PSC-98-0361), see A18.

JURISDICTION

The judgement of the Connecticut Superior Court entered 6-14-95 (A13). The Connecticut Appellate Judgment entered 4-20-99 (A1); and the Connecticut Supreme Court denied certification 7-7-99 (A18). The Petition is filed within 90 days. Jurisdiction of the court is invoked under the First Amendment (Pursuant to Connecticut Statute 31-51q, see A18), 48 CFR 203.7 (A18), and Presidential Executive Order 12526 (A20).

Constitutional, Statutory, Regulatory Provision, and Executive Order Involved

(See Appendix A19-A20)

1. The First Amendment of the United States Constitution
2. Connecticut General Statute 31-51q
3. Code of Federal Regulations 48 CFR 203.7
4. Presidential Executive Order 12526 - Final Report to the President, June, 1986, and titled "A Quest for Excellence" - Appendix M: Defense Industry Initiatives

STATEMENT OF THE CASE

Petitioner was hired as a salaried engineer for defendant UTC, a major defense industry contractor. In 1993 petitioner participated in UTC's "DIALOG" program, which was administered by UTC ombudsman. The creation and administrative enforcement of the DIALOG program, and petitioner's inducement to participate in it, was **directly attributable to federal government encouragement, coercion, and regulation** in the form of executive order, federal regulation, and congressional acts as explained below.

As a result of defense contractor procurement scandals during the 1980's [1], Congress and the President were in an uproar over growing dishonesty among defense contractors.

President Reagan, by Executive Order 12526, appointed a "Blue Ribbon Commission on Defense Management" (known as the Packard Commission) to find methods to reduce waste and fraud in government procurement contracts. In June 1986, the Packard Commission submitted a Final Report with recommendations on how to reduce fraud and dishonesty in defense procurement. The Final Report included Appendix M, entitled Defense Industry Initiatives (DII), (A20) which encouraged an open atmosphere in defense contractors where employees could voice concerns without fear of retaliation . On June 9, 1986 UTC became a signatory to the DII, promising to abide by the recommendations therein. On June 20, 1986 UTC president, Bob Daniel, issued a notice to employees (see A25) that UTC was a signatory to the DII on June 9, 1986, and to fulfill its commitments under the DII to the federal government, UTC was establishing an office of Ombudsman, and a DIALOG program, designed to fulfill its promise to create an atmosphere and a forum where employees could express concerns, including

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[1] See "Fraud in Government Contracting; Best & Ogren, Law & Business, Inc./Harcourt Brace Jovanovich, 1985

violations of Government Contracting Policies, without fear of reprisal. Shortly thereafter, in furtherance of its obligations UTC also issued the UTC Code of Ethics (A27), which promised an open atmosphere where employees could express concerns without fear of retaliation. UTC confirmed through Interrogatories these programs were created pursuant to these federal government requirements. The Code stated:

> "Communication channels will be provided that encourage self expression and open dialog relative to employee opinion, attitudes and concerns. The corporation is committed to supporting the UTC Ombudsman's authority to review employees' concerns and to ensure proper management response. No retribution will be taken against any employee for contacting the UTC ombudsman, any level of supervision, or human resources to express concerns with business policies or practices." (A31)

Additionally, the Code of Ethics also complied with 48 CFR 203.7 (A19), which requires defense contractors have a written Code of Conduct.

Lastly, the Sentence Reform Act of 1988 conferred significant authority upon federal courts to force defense contractors convicted of fraud to develop internal programs to prevent and detect misconduct, and mandates the use of probation if the company does not have an effective program in place to detect and prevent violations of law and contract.

Pursuant to these government requirements, petitioner, and all UTC employees, received extensive training on the UTC Code of Ethics, UTC Ombudsman, and the DIALOG program, with the stated objective being to improve the integrity of UTC as a major defense contractor. The training emphasized the federal government's requirements behind these initiatives. Similar employee training occurred throughout the defense industry.

In 1993, under the umbrella of protection offered by the above, petitioner wrote a DIALOG (A33) objecting to UTC management for near term profit as unhealthy; and specifically

objecting to the out of state sale of a business unit, and that motivation was bonuses for senior managers. It was sent to corporate headquarters. As a result of his DIALOG [2] he was removed from a promotion list and terminated under pretext of a layoff in January 1994. Two levels of supervisory personnel over petitioner, his supervisor and Chief of Project, refused to lay him off because it violated the Code of Ethics. On discovery, petitioner testified he was informed by a management employee, prior to termination, that the division president, Kuhn, had directed his termination because of his DIALOG. During discovery two supervisory levels above petitioner, his supervisor and the Chief of Project Engineering, also testified to that effect. The division VP, Morris, testified it was he who ordered petitioner's termination in response to his DIALOG. Whether it was the president or VP, one fact was clear; petitioner was the only employee at his level selected by senior management, (VP, or president), and his only contact with them was through the DIALOG / Ombudsman program. Universally, all UTC employees who testified, indicated such conduct was a grievous violation of the UTC Code of Ethics, the DIALOG program, and the Ombudsman's office.

Prior to termination petitioner notified the corporate ombudsman and business practices officer of the improper termination directive. Though they agreed to its seriousness, and promised to conduct an investigation - petitioner's specific claims were not investigated, and he was terminated.

Petitioner filed a lawsuit against UTC and individual employees, which included two claims against UTC : Count 34: violation of CGS 31-51q, which prohibits discharge by employer for employee exercise of First Amendment rights; and Count 33: Wrongful Discharge for Violation of Public Policy which favors compliance with a major defense contractor code of ethics, and

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[2] Petitioner expressed similar concerns in the divisional ombudsman forum of "Straight Talk". Evidence did not indicate this caused his termination.

programs therein run by ombudsman. (See A35, A40 for applicable text of Rev F, and Rev G).

Count 33 Rev F (A35), claiming protection as a matter of public policy was stricken by the superior court because it did not flow from public policy deriving from a 'state statute, state constitution, or state judicial opinion.' (A13). A repleading by Rev G (A40) was also stricken. The appellate court (A1) found public policy could derive from federal sources, but found no public policy because petitioner:

> "... was not exercising a right enjoyed by the general citizenry but was exercising a privilege granted him by his employer. The forums alleged by plaintiff were not open to the general public. The privilege that plaintiff enjoyed was to express his concerns over the manner in which UT was being operated. ... Such allegations are clearly distinguishable from Sheets and Faulkner where the plaintiffs alleged they were discharged for refusal to follow employer directives to violate laws ..." @742

The Appellate Court found Count 34, claiming speech protection under State Statute 31-51q, was stricken because:

> "The plaintiff was not acting as a citizen opining about a matter of public concern but as an employee protesting the rumored sale of one of UTC's product lines and the bonuses received by senior management."@735 (A1)

The appellate court stated speech must be on a matter of public concern (A1 @743), but failed to address whether it was, concluding:

> "Because the plaintiff's allegations concern the expression of his opinions as to perceived wrongdoing on the part of upper management at UTC, it is a matter between him and his employer and, thus, is not protected speech." @744

REASONS FOR GRANTING THE WRIT

The question of whether concerns expressed by millions of employees of major defense contractors, through an allegedly safe open atmosphere and/or ombudsman forums under their Code of Ethics, should be protected as a matter of public policy, or by the 1st Amendment, is an important federal question, which has never been addressed by any court.

1. On the Basis of Public Policy

The court determined petitioner was not exercising a right enjoyed by the general citizenry but was simply exercising a "privilege" granted him by his employer. This reasoning errs for three reasons. 1) There are no cases which limit public policy solely to instances enjoyed by the general public. One only need look at Labor Unions or public servants. Their speech may be protected, but their forums are not open to the general public. 2) Nor are there any cases which limit public policy to inducement to violate laws. This is only one aspect of the public policy arena. Pursuant to such a standard, public policy would not protect law-client, doctor-patient, or priest-penitent communications, yet they are protected. 3) The Appellate Court misstated the privilege enjoyed, and pleaded: that was the privilege to express concerns *without retaliation*! Should not such a "privilege" granted by a large defense contractor to improve corporate integrity for public and government benefit be protected?

A Code of Ethics can be a recognized as a source of public policy in wrongful discharge cases. Pierce v. Ortho Pharmaceutical Corp., 84 NJ 58, 417 A.2d 505, 513 (1980); Kalman v. Grand Union Co., 183 NJ Super 153, 443 A.2d 728 (1982). In Pierce the court notes that a code of ethics designed to serve only the interests of a profession or an administrative regulation concerned with technical matters probably would not be sufficient. @512. Such is not the case with the UTC Code of

Ethics (A27) which is intended to serve the interests of not only the employer, but the government, the community and the nation.

Although the Appellate decision affirmed Federal rules and regulations may form the basis of public policy (A10), it refused to apply them to this case. By fn16 the appellate court stated the Executive Order and CFR were concerned with fraud and dishonesty in government contracts which petitioner had not alleged. This interpretation incorrectly determines the code of ethics, ombudsman and DIALOG were created solely as reporting mechanisms. In matters of fraud and dishonesty, defense sector employees always had, and still have, the option of reporting directly to DCAS, DPRO, or the justice department. Given prolific procurement fraud, the federal government realized reporting mechanisms alone, obviously did not work. The CFR and executive order (the DII) intended an open atmosphere where an honest workforce could thrive, not one filtered solely to an individual reporting fraud and dishonesty. As stated: "Each company will create a *free and open atmosphere* that allows and encourages employees to report violations of its code to the company without fear of retribution for such reporting." (A20) Clearly the government hopes such an atmosphere would discourage and prevent fraud before it occurs. The state court was wrong; allegations of fraud and dishonesty are not required.

Major defense contractor Codes of Ethics, Ombudsmen, and DIALOG type programs, were born by command and coercion from three federal sources, which favor compliance with, and protection of them, as a matter of public policy.

The Executive Branch: Executive Order 12526 created the Packard Commission, and required it to study and report ways to reduce fraud and dishonesty in defense procurement. It resulted in a Final Report to the President, 6/86. Under Government-Industry Accountability (p. xxvii) it stated:

> "... Waste and Fraud by corporate contractors are more than a ripoff of the taxpayer - they're a blow to the security of our nation. And this the American people cannot and should not

> tolerate. ... Management and employees of companies that contract with the Defense Department assume unique and compelling obligations to the people of our Armed Forces, the American taxpayer, and our nation. They must apply and be perceived as applying the highest standards of business ethics and conduct."

Included in the Final Report, Appendix M, are the Defense Industry Initiatives (A20) which was signed by UTC and at least 32 major defense contractors as of June 1986. Therein they "... pledged to adopt and implement a set of principles of business ethics and conduct that acknowledge and address their corporate responsibilities under federal procurement laws and to the public." Final Report p78. In a UTC case the Connecticut District Court responded favorably to defendant UTC's claim that: "The adoption by UTC and the defense industry of these [Defense Industry] Initiatives were a clear recognition of public policy announced at the highest echelons." Monoranjan Roy v. UTC, No. H89-680(JAC) (D. Conn), Motion for Protective Order 5/2/90, p.18.

The Legislative Branch: 48 CFR (Code of Federal Regulations) 203.7 [Defense] "Contractor Standards of Conduct", 203.7000 "Policy" (A19), requires a major defense contractor to have and enforce a written Code of Ethics to establish the *highest degree* of corporate integrity and honesty. It requires mechanisms for reporting misconduct and encouraging employees to make such reports.

The Judicial Branch: A parallel effort to reduce fraud in government contracting and induce substantive honesty and integrity among corporate government contractors was realized by "The Sentence Reform Act of 1988" (passed by the legislature and codified under 18 U.S.C. §3553a - see 18 U.S.C. §§3551-3559, 3561-3566, 3571-3574, 35581-3586 and 28 U.S.C. §§ 991-998 and which became effective in November 1, 1991). It confers significant authority upon the federal courts to force companies convicted of fraud to develop internal programs to

prevent and detect misconduct, and mandates the use of probation if the company does not have an effective program in place to detect and **prevent** violations of the law. [3] [4] See United States Sentencing Guidelines Manual (1992) §8D11.1(a)(3). The federal government has closed the loop at trying to force corporations doing business with the federal government to develop *substantive* codes of conduct that *will* detect and/or **prevent** violations of the law.

Separate from the US government sources of public policy, which created the Code of Ethics, the Court should consider it public policy to enforce a defense industry Code of Ethics which encourages self-expression and open dialog in **labor** relative to employee opinions, attitudes and concerns without fear of retaliation. Not only does this surface contractual implications, but it has the obviously beneficial effect of corporate self-criticism and non-litigious resolution of labor disputes, which are recognized public policies. [5] Also, the court should view conduct which invites employee self-expression by promising non-retaliation and then retaliates, as fraudulent. There is a strong public policy against fraud. Schmidt v. Yardney Electric Corp., 4 Conn. App. 69, 74 (1985).

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[3] See "Corporate Probation Under the New Organizational Sentencing Guidelines; Yale L.J., V.101:2017 (1992).

[4] In US v. Rockwell Int'l Corp., No. 88-48(A)-CBM (C.D. Cal. 3/6/89), Rockwell was fined heavily for defrauding the government despite a Code of Ethics with a self-governing compliance program, because the court found the compliance program less than model.

[5] Public policy favors the settlement of disputes. City of Groton v. CT Light & Power, 84 F.R.D. 420, 421 (D. Conn. 1979); Shabazz v. Scurr, 662 F. Supp. 90, 92 (S.D. Iowa 1987); see also Federal Rules of Evidence 408 advisory committee's note. Public policy also favors reduction of litigation through alternative dispute resolution (ADR). The Civil Justice Reform Act of 1990, 104 Stat. 5089. 28 U.S.C.A. Section 102(5)(D) encourages ADR programs.

Ombudsman [6]

The state court decisions failed to address *in any respect* the fact petitioner expressed his concerns through the corporate ombudsman program of DIALOG. As a matter of public policy the Court should protect labor concerns expressed through major defense contractor [UTC] Ombudsman programs because the ombudsman is supposed to represent: 1) a protected forum for expression of employee concerns, 2) a forum for alternative dispute resolution, and 3) a form of corporate self-critical analysis.

Communications made to the ombudsman have repeatedly been identified by the courts as privileged, analogous to the relationship between attorney - client, clergy - parishioner, and doctor - patient. Privileged Communications, 98 Harv. L. Rev. 1450, 1456 (1985). On issues of evidentiary disclosure, courts have repeatedly ruled communication between the office of defense contractor ombudsman and employees was privileged pursuant to the Federal Rule of Evidence 501 in the cases of

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[6] In a general sense, an ombudsman is a person commissioned to protect others, particularly against possible impropriety on the part of the bureaucracy. See A Brief Survey of the History of the Ombudsman, 2 The Ombudsman J. 85, 85 (1982). The ombudsman has the power to investigate, criticize and publicize, but not to reverse administrative actions. Ombudsman are found in government as well as in the private sector to include colleges and universities, corporations, newspapers, hospitals and the health profession. see Ombudsman and the Limits of the Adversary System, 75 Colum. L. Rev. 845, 845-847. The role of the corporate ombudsman includes responsive listening, investigation, upward feedback to management, direct resolution, mediation, advocacy, and arbitration. The Corporate Ombudsman: A New Approach to Conflict Management, Negotiation J., April 1986, p. 195, 198-199.

The public perception of corporations along with the absence of checks and balances within the corporate structure justifies and defines the present role of a corporate ombudsman. see An Answer to the Public Perception of Corporations: A Corporate Ombudsperson?, 46 BUS. LAW 29, 35 (1990). An ombudsman typically handles complaints by employees, acts as a neutral fact finder, and provides an outlet to employees bothered by corporate conduct. *id.* Employees find security in the knowledge that reporting a problem or concern to the ombudsman will not be divulged or later used against them. *id.*

Monoranjan Roy v. UTC, No. H-89-680JAC (D. Conn. 5/29/90) [7]; Kientzy v. McDonnel Douglas Corp., 133 F.R.D. 570, 571 (E.D.Mo. 1991). The ombudsman-employee relationship in a large defense contractor [such as UTC] has been found to aide in the remedy of workplace problems to benefit employees and *possibly the nation*. Kientzy, supra.

1) **Ombudsman as a protected forum for expression of employee concerns.** The courts have generally recognized 4 conditions for establishing privileged communications as identified in In re Doe, 711 F.2d 1187 (2d Cir. 1983): 1) The communication must be made in the belief that it will not be disclosed; 2) confidentiality must be necessary to the preservation of the relationship between the parties; 3) the relationship should be recognized by society as one worthy of being promoted; and 4) the injury to the relationship incurred by disclosure must outweigh the benefit gained in the correct disposal of litigation. Unfortunately, these factors were framed to provide guidance in determining whether communications are privileged and protected from evidentiary disclosure during ongoing litigation. This is not the scenario in Emerick, but considering these factors provides information germane to this petition.

There are 3 cases dealing with privileged communications involving ombudsman: Shabazz v. Scurr, 662 F. Supp. 90 (S. D. Iowa 19887); Monoranjan Roy v. UTC, supra; and Kientzy v. McDonnell Douglas Corp., 133 F.R.D. 570. None of these duplicate the facts in Emerick but as noted above, deal with discovery/testimony during ongoing litigation. The Kientzy case first introduced and recognized the ombudsman-employee privilege in the arena of a major corporate defense supplier,

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[7] In Roy the district court ruled favorably in response to UTC's contention that: "The services provided by the ombudsman's office, particularly at large corporations like UTC that are heavily involved in the defense industry, serve important public policies." Monoranjan Roy v. UTC, No. H89-680(JAC) (D. Conn), Motion for Protective Order 5/2/90, p.17.

analogous to UTC. The Kientzy and Roy cases are both analogous to Emerick in that the ombudsmen were members of the Corporate Ombudsman Association and had agreed to the Code of Ethics and both corporations (UTC & McDonnell Douglas) were committed to the Defense Industry Initiatives on Business Ethics and Conduct. Petitioner considers the four factors identified in In re Doe in light of the facts in Emerick.

The first factor, belief in the confidentiality of information. Petitioner participated in "DIALOG", a confidential UTC communications program run by ombudsman, on the basis his participation would be protected.

The second factor, was confidentiality necessary to the preservation of the relationship between the parties. In Kientzy the court found a function of the ombudsman's office was to receive communications and to remedy work related problems in a strictly confidential atmosphere. In Emerick there is a twist to this 'confidentiality' as "DIALOG" provides an option which allows the ombudsman to arrange for the DIALOG writer to speak with a non ombudsman knowledgeable about the employee's concerns. There is no disclaimer the employee will loose the protection afforded by confidentiality, and indeed DIALOG rules require the same level of integrity and confidentiality by employer agents participating in the program.

The third factor, does society recognize the relationship as one worthy of being promoted. In Kientzy the court noted that the defendant, McDonnell Douglas Corp., was a large government contractor in the aerospace and defense industries, and its employees *needed* to have a forum to make confidential statements and to receive confidential guidance and aid to benefit themselves and *possibly the nation*. The court made special effort to state this *need* existed in spite of some employees' perception that such actions may be against the interests of the company or other employees. The findings in Kientzy are applicable to Emerick and all defense sector employees.

The fourth factor, that the injury to the relationship incurred

by disclosure must outweigh the benefit gained in the correct disposal of litigation. As framed, this is germane to revealing ombudsman communications by discovery during litigation and is not directly applicable here. However, on the matter, the Kientzy court stated a successful ombudsman program resolves disputes quicker than other more litigious methods; and for a successful ombudsman program, employees must feel they are not jeopardizing themselves by participation; the obvious benefit to the employee, the corporation and society being to avoid litigation altogether. Thus here, it is not the disclosure of privileged communications by the ombudsman which is at issue, but protection for the employee who provided the privileged communications to the ombudsman in the first place.

2) **The corporate ombudsman in the role of alternative dispute resolution**. Most cases, whether civil or criminal, are settled outside of litigation. 38 Hastings L.J. 239, 242. Public policy favors the settlement of disputes. City of Groton v. CT Light & Power, 84 F.R.D. 420, 421 (D. Conn.1979); Shabazz v. Scurr, 662 F.Supp. 90, 92 (S.D.Iowa 1987); see also Federal Rules of Evidence 408 advisory committee's note. Public policy also favors reduction of litigation through alternative dispute resolution (ADR). The Civil Justice Reform Act of 1990, 104 Stat. 5089. 28 U.S.C.A Section 102(5)(D) notes that effective litigation management should include utilization of ADR programs ADR includes a variety of procedures including ombudsman. Am. Bar Ass'n Standing Com. on Dispute Resolution, ADR: An ADR Primer 1-4 (1989). In his function as a spokesman for ADR an ombudsman acts as a neutral party. The Administrative Dispute Resolution Act, 5 U.S.C.A. §581(9) defines a neutral as an individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy. In Kientzy, supra @572, the court compared the ombudsman's ability to informally aid in resolving disputes to confidential settlement discussions, which are inadmissible under Federal Rule of Evidence 408. In Monoranjan Roy supra

Motions for Protective Order @26, the court noted that society clearly benefits because ombudsman confidentiality enabled many disputes to be resolved informally. And in Shabazz v. Scurr supra @92 the court felt a need to protect the ability to informally resolve problems and reduce litigation. Consistently, alternative dispute resolution has been viewed by the federal courts as a function of the corporate ombudsman, and protected as a matter of public policy.

3) **The corporate ombudsman as a form of self-critical analysis of the corporation**. There is a public interest in protecting self-critical analysis, or internally driven improvement. Bredice v. Doctors Hospital, Inc., 50 F.R.D. 249 (D.D.D. 1970). The more important the improvement is to the public, the more likely that privilege may claimed. The Privilege of Critical Self-examination, 58 Def. Couns. J. 504 n.52 (1991). This is particularly true with respect to public policy goals. Self-critical analysis is a significant portion of an ombudsman's job: corporate ombudsmen devote about 30% of their time providing feedback to upper management about new or potential problems in the organization. The Corporate Ombudsman, Negotiation J., April 1987 127, n1 @132. The court has already recognized the need for confidential collection of data as important to self-critical analysis. Univ. of Penn. v. EEOC, 493 U.S. 182, 201-202 (1990) A function of the UTC ombudsman is specifically described as recommending corporate policy changes and other corrective actions. Prominent among the possibilities would be the investigation of claims made by whistleblowers and advising the corporation of any needed changes. The importance of ombudsman inputs in self-critical analysis stems from his data base. Based upon his position of employee trust within the corporation he has access to extensive and often confidential employee concerns. Failure to protect this position of trust would jeopardize his ability to acquire information essential for self-critical analysis.

Whether expressions of employment related concerns are

viewed as an element relating to honesty in government procurement, as a forum for alternative dispute resolution, as a form of self-critical analysis, as fraudulent, or as protected speech, the key to the successes of any defense corporation Code of Ethics or ombudsman program, or any honesty in the corporate arena period, is an open atmosphere exists where an employee is permitted to express concerns without fear of retaliation. If employees feel that to be protected from retaliation a correct 'legal determination' must be made as to whether their concerns constitute legal fraud and dishonesty, or whether the forum is absolutely confidential to only the ombudsman, then there will be a chilling effect [8] which will diminish or destroy open employee-management communication and the desired benefits derived therefrom to government, labor, and society.

Petitioner's DIALOG expression of employment related concerns through the UTC ombudsman program, as encouraged by the UTC Code of Ethics in compliance with federal executive orders, legislative acts and regulations, and judicial decisions, represents the exercise of a right, duty and obligation which public policy should protect from retaliation. Petitioner's Complaint alleged a discharge in violation of public policy (A35, A40), and alleged the specific sources of recognized public policy argued herein. It is legally sufficient.

Finally, if petitioner's speech is protected under the First Amendment, it would also be contrary to public policy. Constitutionally protected speech is a cognizable expression of public policy for the purpose of a wrongful discharge claim against a private employer by an at-will employee. Novosel v. Nationwide Inc., Co., 721 F.2d 894. [9] Grounds for protecting

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[8] The chilling effect of a threat of discharge has been recognized in the public employee context. Pickering v. Brd. Of Ed., 391 U.S. 563, 574 (1968).

[9] Novosel claimed his discharge for refusal to engage in lobbying efforts for employer was wrongful as a matter of public policy. The court dismissed the claim. Appeals court reversed noting this was a cognizable

petitioner's speech under the First Amendment follow.

2. First Amendment Protection

The superior court, struck his claim for constitutionally protected speech on the assertion petitioner was not acting as a citizen opining about matter of public concern but as an employee protesting the rumored sale of one of UTC's product lines and the bonuses received by senior management. Ignored was substantial data provided that the out of state movement of business and extraordinary bonuses received by UTC management was of considerable public concern addressed prolifically by the media, the legislature, and on political platforms. In petitioner's case, the superior court did not even have petitioner's DIALOG to review, and missed the issues he squarely pleaded. The degree to which an employee's speech involved matters of public concern involves resolution of questions of fact, and cannot be decided on a motion to strike. Anderson v. E&J Gallo Winery, 9 IER Cases 48 (1985), addressing a similar 31-51q question.

Although noting speech must be on a matter of public concern, the Appellate Court failed to evaluate petitioner's speech and determined, because petitioner's allegations concern expression of his opinions of perceived wrongdoing on the part of upper management at UTC, it is a matter between him and his employer and, thus, is not protected speech. (A1@744)

This petitioner can find no cases where allegations of management wrongdoing excludes speech from protection. Indeed, most employment freedom of speech cases stem from allegations of wrongdoing by management, and would fail by this analysis. For example in Connick v Myers, 461 US 138, one question in a 12 question questionnaire critical of management

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expression of public policy derived from the 1st Amendment of the constitution, although a 1st Amendment claim was not specifically alleged by Novosel.

was found to be on a matter of public concern.

The 1st Amendment of the U.S. Constitution promotes honesty in government by seeing to it that public business functions under the hard light of public scrutiny. 16A C.J.S. Constitutional Law § 455. The U.S. Constitution does not prohibit a private person's infringement of another person's 1st Amendment rights, but forbids only such infringement which may properly be attributable to the state, ... When private action becomes imbued with a governmental character, or when government significantly insinuates itself into the operative activities of private parties, action by private parties may be subject to all of the constitutional limitations on governmental action. 16A C.J.S. Constitutional Law § 456. [10]

The abuse of a First Amendment right in a protected forum by private parties entrusted and required by the federal government to create that forum, and protect from retaliation employees who used that forum, mandate a finding of state action and First Amendment protection for the injury to petitioner caused by his expression in that forum. Private parties may incur liability for their conduct when the individual actor is a willful participant in joint activity with the State or its agents. Adickes v. S.H. Kress and Company, 398 U.S. 144, 152, 90 S.Ct. 1598.

UTC, and major defense contractors, and the Federal government, were **joint participants and partners** in activity creating allegedly protected forums for defense sector employee speech, intended to make private contracting with the U.S.

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[10] "Freedom of expression operates as a system of underlying values, legal rules, and enforcing institutions. The ability of the employer to abridge deeply the expressive rights of large numbers of employees, heightened by the increased economic and social dependence of the employee on her (sic) job and by the typical imbalance in the employer-employee bargaining positions, seriously weakens this system. On this basis, governmental protection of employee speech in the private sector is both justified and essential." Free Speech, the Private Employee, and State Constitutions, Yale L. J., vol. 91:522 @ 532, (1982) case cites noted therein.

government more honest for the government and prolific for defense contractors.

Where the State has entered the field of private corporate ethics, and seeks protected employee speech in the private workplace, it places its power, image, and prestige into the activities of the private partner; Subsequent failure to recognize state action in the activities of the private partner in these areas, "... would in many cases permit the Government to endorse and encourage conduct in which it could not itself permissibly engage." Holodnak v. Avco-Lycoming of Stratford, 514 F.2d 285, 289 (2nd Circ, 1975).

First Amendment rights should exist on private property, where federal 'state action' is accounted for in the creation of the protected speech forum, incumbent in which is protection for the user by the private administrator of the forum.

State Action

"The law of state action ... has, to date, developed no precise, rigid test, ... for determining what conduct is government and what is private." Cologne v. Westfarms Ass., 192 Conn 48, 83 (1984). The question of how much government involvement constitutes "state action" does not lend itself to a simple answer. Rather, the task is one of "sifting facts and weighing circumstances. Burton v. Wilmington Parking Authority, 365 U.S. 715, 722, 81 S.Ct. 856 (1961). Conduct that is formally private may become so entwined with governmental policies or so impregnated with a governmental character that it can be regarded as governmental action. Evans v. Newton, 382 U.S. 296, 299 (1966). Before making a decision on this matter the court must consider the totality of circumstances presented by the evidence in determining whether state action is present. Gilbreath v. E. Ark. Planning & Dev. Dist., 471 F. Supp. 912 (1972). This cannot be done on motion to strike.

There are case precedents for First Amendment rights on private property, and redress for violation of those rights by

private parties on said private property. In Marsh v. Alabama, 326 U.S. 501 (1946), the court found a public forum in a company town. In Amalgamated Foods Employees Union v. Logan Valley Plaza, 391 U.S. 308 (1968), a private shopping mall was a public forum for freedom of speech rights. In Novosel v. Nationwide Insurance Co., 721 F.2d 894 (3d Cir. 1983), the First Amendment applied to a discharged employee who refused to lobby the state legislature on his private employer's behalf. While these cases stand for different propositions than arise in Emerick, they serve to demonstrate the proposition that, for reasons stated therein, First Amendment and/or constitutional provisions, can apply to private property **against the objections of the owners.** Many state and federal courts have ruled on this matter on a case by case basis and affirmed or contradicted Marsh, Logan Valley and Novosel, for reasons cited therein. Two important cases which failed to find federal or state constitutional speech protection on private property are Loyd v. Tanner, 407 U.S. 551 (1972), and Cologne v. Westfarms Ass., 192 Conn 48 (1984). The shortcomings noted therein regarding constitutionally protected speech are not present in Emerick.

In Loyd, the court refused to extend First Amendment rights to distribute handbills in a privately owned shopping mall because the subject of the hand billing was not directly related to any activity within the shopping center. In Emerick, expressing employee related concerns by participation in DIALOG was directly and specifically provided for, and encouraged by, the private property owner at the behest of the federal government, and thereby does not suffer the deficiency noted in Loyd.

In Westfarms, the Connecticut Supreme Court found that private property did not provide a forum for Connecticut constitutional free speech **"against the objections of the owners"**. Id at 63. Westfarms raises a most significant point. A review of all freedom of speech cases (federal and state) indicates an aggrieved party's right of expression was violated or denied by the private property owner, a government official, or

by the law. In Emerick, **the petitioner, and all defense contractor employees, are invited by the private employer, to express concerns in forums on the employer's private property, as created by the private employer, at the behest of the federal government, for precisely that purpose**.

First Amendment claims must always be adjudicated in light of the special characteristics of the environment involved in the particular case. Tinker v. Des Moines Independent School Dist., 393 U.S. 503, 506 (1969). State action can exist in a private decision when the state has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice may be deemed that of the State. Blum v. Yaretsky, 457 U.S. 991, 1004 (1982). State legislation which encourages an activity may give rise to state action. Robinson v. Florida, 378 U.S. 1153, 84 S.Ct. 1693 (1964).

The facts discussed herein prove the federal government exercised coercive power to force UTC, and other major defense contractors, to create and administer the [DIALOG] forum for protected speech (and the Code of Ethics, and Ombudsman). The federal government must permit First Amendment redress for employees injured by their employer when they use the protected speech forum(s) as intended by the federal government.

The Public Forum Analysis for Federal State Action

The quintessential public forum may be defined in the following manner: "In places which by long tradition or by government fiat have been devoted to assembly and debate, the rights of the State to limit expressive activity are sharply circumscribed. ... [Such locations] have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." Hague v. CIO, 307 U.S. 496, 515 (1939). At the other extreme the courts recognize that some government properties are decidedly 'non-public' for First Amendment purposes. "[On public] property which is not by

tradition or designation a forum for public communication ... the State may reserve the forum for its intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view. Perry Education Assn. V. Perry Local Educators' Assn., 460 U.S. 43, 46 (1983). A non-public forum is government property opened to some but not all types of speech. Although it must permit expression of all viewpoints within the narrow category of speech that the government has intended to authorize, it may exclude other categories of speech. See Lamb's Chapel v. Center Moriches Union Ree School District, 959 F.2d 381, 387 (2d Cir. 1992). Petitioner asserts Emerick involves what may be described as a limited non-public forum created by the federal government on private property with the consent and cooperation of the private property owner, defendant UTC. See Cornelius v. NAACP Legal Def. Fund, 105 S.Ct. 3439, 3458 (1985). "A state may be held responsible for private action only when it has exercised coercive power or has provided so much encouragement that the decision may fairly be viewed as that of the state. Blum v. Yaretsky, 457 U.S. 991, 1004 (1982)."

In Emerick, federal coercion and encouragement was applied specifically to create a forum for protected speech on a defense contractor's private property. Incumbent in this forum is protection from retaliation by the employer.

A Contractual Analysis for Federal State Action

In discussing a claim for compensatory damages the court in Holodnak, supra at 292, noted that **a private employer can contractually assume an obligation to observe the constitutionally protected interests of another**. There are clearly elements for an express or implied contract between the federal government and UTC, and other major defense contractors, through the signing of a signatory agreement,

wherein they promised to comply with and adhere to the recommendations of the Defense Industry Initiatives (A20) made pursuant to an Executive Order. These recommendations included the creation of an open atmosphere where defense sector employees can freely express employee concerns without retaliation; And that the defense contractor, UTC, would be responsible for creating and administering this forum. Such promises by UTC, and other defense contractors, form an implied contract to observe constitutional First Amendment rights in the forum, where consideration to defense contractors would be continued consideration as an acceptable government contractor, and possible mitigation of liability; and the benefit to the federal government would be improved honesty in government contracts. Most importantly is that petitioner, as a defense sector employee, is a **third party beneficiary** to any contract for First Amendment rights, having been provided a limited non-public forum for protected speech without retaliation.

Major defense contractors and their employees who administer their Codes of Ethics, Ombudsman and DIALOG type programs, are acting under color of law as agents for the State, by implied or express contract, specifically to police the protected speech forums promised as signatories to the DII. This satisfies a First Amendment state action requirement from a contractual viewpoint.

Supplemental Grounds for a Contractual Argument
Public Policy and Speech Protection Pursuant to Federal Law

48 CFR 203.7 (A19), which is a requirement for all defense contracts, provides another significant contractual basis for agency status for UTC employees involved in administration of a First Amendment protected speech forum. Therein, §203.7 requires of defense contractors "... the highest degree of integrity and honesty" and "... standards of conduct and internal controls..." and §203.7001 Procedures: specifically requires (1)

standards of conduct and a written code of business ethics and conduct, and an ethics training program for all employees, and (2) a mechanism by which employees may report suspected instances of improper conduct; and ... (3) disciplinary action for improper conduct. Thereby the federal State has required the private employer, UTC, to police any retaliation against petitioner for exercising his speech rights in the forums created. Any such administrative conduct by UTC, clothed under color and authority of the regulation, would clearly be as an agent of the State. In petitioner's case, UTC has violated petitioner's First Amendment rights when, as an agent of the federal State, it was UTC's duty to protect them.

Consideration of Corporate Ombudsman

The DIALOG forum utilized by petitioner was administered by ombudsman. Surprisingly no consideration of ombudsman forums was given by the lower courts as might apply for protection under the First Amendment, or public policy. See the complete discussion of ombudsman previously presented herein.

Because the ombudsman-employee relationship at UTC was specifically created by federal initiatives (State action) to satisfy a specific government interest of promoting honesty in defense contracting, and communications to ombudsman have repeatedly been recognized as privileged and protected by federal courts, it forms another convincing basis for recognizing protected speech under the First Amendment or as a matter of public policy. While petitioner may not have been terminated by an ombudsman per se, those enlisted and entrusted by ombudsman to assist in administration of the forums are held to the same standards, as required by written guidelines for DIALOG administration.

If this court does not protect expression within the ombudsman forum (DIALOG) utilized by petitioner, and protection from retaliation by UTC management, it could have very serious consequences for the future of these programs, and

the honesty in government contracting they were to promote. Defense sector employees must know they can express concerns without fear of retaliation, or the programs will fail, not only at UTC, but in the defense industry as well.

First Amendment Protection by State Action Owing to Links Between the Federal Government and UTC

Another basis for recognizing a First Amendment claim is found in the case of Holodnak v. Avco-Lycoming of Stratford, 381 F.Supp. 191 (D.Conn., 1974), upheld 514 F.2d 285 (2nd Circ, 1975). In this case a private sector employee published an article critical of the company and was discharged. The court found the links between the employer and the federal government were sufficient to make the private employer's action in discharging the employee for speech a violation of his of First Amendment rights, and "state action" under the Fourteenth Amendment. The evidence cited in Holodnak are compared to the evidentiary facts which may be proved in Emerick :

Holodnak	Emerick
○ 80% of the work was defense related.	○ 100% of work in petitioner's department was government related.
○ DOD maintained a 'large force' at the plant to oversee operations.	○ Approximately 60-80 resident DOD DPRO/DCAS.[11]

[11] DOD DPRO/DCAS means Dept. of Defense "Defense Procurement Office" and "Defense Contracts Administration Services".

○ Most of the equipment was government owned.	○ The same.
○ Most of the land and buildings at this plant were owned by the government. [12]	○ The land/buildings are privately owned.
○ None	○ A protected speech forum was specifically required by the federal gov't and developed by the private employer.
○ None	○ Ombudsman administered a forum for protected speech.
○ Court determined employer had contracted to observe Constitutional Rights.	○ Private employer contractually agreed to assume obligation to observe protected speech interests.

Of note in Holodnak is the ownership of the real estate; **This was not emphasized by the court as a salient or determining factor**. A contractor's lease of government land and buildings has never been held to extend 1st Amendment protection to contractor employees. When analyzing the various factors, one should consider the cumulative impact, which may justify a

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[12] Avco paid for the use of federal facilities through a negotiated deduction in each contract. See Holodnak, 514 F.2d at 289.

finding of state action. Rendell-Baker v. Kohn, 457 U.S. 830, 849, note 1 (1981). In Holodnak, though it owned the premises, the government took no part in running the business of Avco-Lycoming; analogously in Emerick, the government required the forums at issue, but took no part in administering the forums. In Emerick, there are significant other factors to include state action in creating a protected speech forum. The government has imposed a requirement for UTC, in its government contracts by CFR, and through the DII, to maintain and administer an open atmosphere where employees can express themselves without retaliation.

Consideration of the Size of the Corporate Defendant

A supporting factor to consider in whether state action is present in previous arguments is the size of UTC. Large defense contractors play an important role in the lives of millions of laborers and their families. Many of the facets existing in the company town, as identified in Marsh, supra, exist in large corporations like UTC (largest Connecticut employer), who employ hundreds of thousands of people. These employees and their families enjoy benefits covering many aspects of their lives, to include health care, life, medical and disability insurance, counseling, pension and savings plans, educational assistance, child care, banking and investment, sports activities, personal and career growth programs, social activities, clubs, community assistance programs, etc. In addition to increasing inroads into the lives of corporate employees and their families, corporations also have a significant impact upon the health of the communities in which they are located by the sheer volume of employees involved. In the case of UTC, Connecticut's largest employer, the community becomes the state of Connecticut. Corporations like UTC, have grown increasingly active in community affairs and in attempting to influence political affairs through Political Action Committees (PACs) created under the 1971 Amendments

to the Federal Election Campaign Act. The only notable difference between large corporations of today and the company town in Marsh, is UTC does not own the land upon which employees homes are built.

It is the policy and ethics of UTC and other large defense contractors, at the behest of the federal government, to encourage open dialogue by their millions of employees in areas of employee concerns without retaliation. Given the many facets of life influenced by the employer-employee relationship in mega corporations like UTC and other major defense contractors, and the extent to which these concerns could improve honesty in defense contracting as intended, employee concerns would cover the broad spectrum of speech protected in a public forum context of the company town, or a large shopping mall. Thus the limited non-public forum utilized by these defense sector employees, is tantamount to an exercise of free speech as protected in the public forum context by the First Amendment.

Fifth & Fourteenth Amendment Not Violated

Permitting First Amendment redress for violation of speech rights on UTC's private property does not violate the Fifth Amendment's guarantee against taking property without just compensation, and the Fourteenth Amendment's protection against the deprivation of property without due process, because there would no taking when the value and use of the property are not impaired. In fact in Emerick the private employer willfully created a forum, and encouraged its use by written policy and invitation, for the benefit of the employee, the employer, the public and the federal government. If anything this constituted a willful and voluntary, but limited, use of UTC's property for the exercise of First Amendment rights.

After a finding of First Amendment rights in Emerick, its alleged infringement would be balanced against the employer's interest in job efficiency. Pickering v. Board of Education, 391

U.S. 563 (1968); As well as the time, place and manner of expression. Grayned v. Rockford, 408 U.S. 104, 115-117 (1971); State v. Linares, 232 Conn. 345, 382 (1995). A limited non-public forum in Emerick would suffer no impediment in these considerations, based on the fact petitioner's speech was at the beckoning of, and within the parameters established by, UTC and the federal government. The balancing test would be a question for the trier of fact based on all the evidence, and is not a question determined by a Motion to Strike.

Summarizing

The UTC Code of Ethics, UTC Ombudsman, and UTC DIALOG program, and petitioner's reliance on, and participation in them, are directly attributable to US government encouragement, coercion, and regulation. These programs at UTC, and many other large defense contractors, are intended by the federal government to serve a significant government interest, namely to create an open atmosphere in the private workplace where the millions of employees of large defense contractors are free to express employee concerns which, inter alia, would benefit the government and the nation through increased honesty and openness among government contractors.

The creation of these forums on private property was made through cooperation of these defense contractors, who administer the forum(s) for government benefit, and to maintain their status as an acceptable supplier under government contracts.

The federal government 'the State' has entered the field of private corporate ethics and employee free speech in the private workplace. Failure to recognize state action in the activities of the private partner would, in many cases, permit the government to endorse and encourage conduct in which it could not itself permissibly engage, and significantly harm federal initiatives to create honesty in the defense industry for government and national benefit.

Considering the gargantuan costs to the taxpayer for defense and government contracts, and the national interests involved in those contracts, defense contractor integrity is of utmost importance. Especially now, when cost based engineering, profit maximization, and "faster, better, cheaper" philosophies are so dominant. On behalf of the millions of defense sector employees, the taxpayer, the government, and the national interests, the Supreme Court should protect employees' speech under the First Amendment, or as a matter of public policy, when made pursuant to the Code of Ethics and/or within Ombudsman forums, and which speech is invited and within the scope of these forums.

First Amendment rights, subject to proper considerations, are guaranteed to employees who work for the federal government; they also protect private unionized employees under the National Labor Relations Act who act to secure a group benefit. NLRB v. Jones & Laughlin Steel Corp, 301 US 1,33 (1937). The only laborers currently unprotected is the non-unionized private sector employee. Considering the cumulative factors regarding state action in the creation of the Code of Ethics, Ombudsman, and DIALOG forum at issue, and the nature of the corporate defendant hosting this forum, the Supreme Court should conclude that defense sector employees who express concerns within the limits prescribed by the forum deserve some modicum of protection, by the First Amendment or public policy. If the federal government initiatives had never existed, there would be no UTC (or major defense contractor) Code of Ethics, ombudsman, or DIALOG type programs; the petitioner would still be working, and defense procurement fraud would be as rampant as ever.

> "Free discussion concerning the conditions in industry and the causes of labor disputes appears to us indispensable to the effective and intelligent use of the processes of popular government to shape the destiny of modern industrial society." Thornhill v. Alabama, 310 U.S. 88, 103 (1940).

CONCLUSION

This petitioner has studied many cases on public policy and the First Amendment. He believes his question is as important as any he has reviewed, and the arguments in support thereof are as substantive, convincing, and conclusive, as any case. It affects the millions of defense sector employees, hourly and salary alike, and the billions spent annually in defense and government procurement.

Petitioner respectfully requests the Supreme Court of the United States grant Certiorari, reverse the dismissal judgments of the State Appellate and Superior Courts, and permit his wrongful termination claims: Counts 33 for public policy, and 34 for protected First Amendment speech.

Respectfully submitted,

Roger Emerick 10-1-99

Roger Emerick, Pro Se Date
Plaintiff- Petitioner

No. _____

In The
Supreme Court Of The United States

ROGER EMERICK,
Petitioner,

v.

UNITED TECHNOLOGIES CORPORATION,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF CONNECTICUT

APPENDIX

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APRIL, 1999 52 Conn. App. 724

ROGER EMERICK *v* ROBERT KUHN ET AL.

(AC16412)

Lavery, Landau and Hennessy, Js.

Syllabus

The plaintiff sought damages for, inter alia, the allegedly wrongful termination of his at-will employment by the defendant U Co., which he claimed resulted from his exercise of the right to free speech during an employer sponsored forum. The trial court rendered judgment for the defendants, from which plaintiff appealed to this court challenging, inter alia, the trial court's granting the defendants' motion to strike two wrongful discharge counts of the complaint containing allegations of violation of public policy and violation of the constitutional right to free speech *Held:*

1. Contrary to the claim made by the defendants, the plaintiff did not waive his right to challenge the striking of those counts by pleading over, the revised counts being materially different from the prior pleadings, but the plaintiff could not prevail on his challenge to the trial court's ruling because the plaintiff's statements of opinion as to perceived wrongdoing on the part of upper management of U Co. was a matter between him and his employer and not a matter of free speech, and his discharge did not violate an important public policy derived from the state or federal statutes cited by the plaintiff.

< omitted is text regarding other appeal issues>

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The following facts are relevant to this appeal. The plaintiff was an at-will employee working as a project engineer in the space ;and sea systems department of Hamilton Standard from 1980 until January 19, 1994. As an employee, the plaintiff participated in United Technologies sponsored programs designed to give employees a forum in which to express their views and concerns, variously known as "Straight Talk," "DIALOG," and "All hands." United Technologies employed ombudsmen to facilitate employee use of the forums.

Beginning in July, 1993, the plaintiff expressed his concern about certain management practices of Hamilton Standard and United

Technologies executives during a number of such forums. The essence of his concern was that the poor economic climate of the time forecast budget reduction and layoffs. Despite this forecast, according to the plaintiff, senior executives were being rewarded enormous bonuses without regard to the fate of lower level United Technologies employees and without regard to the fact that the corporation accepted financial aid from the state of Connecticut. The plaintiff was also of the opinion that United Technologies was more concerned with short term profits than long term growth, the interests of its shareholders and the public good.

From November, 1993, through January, 1994, the plaintiff expressed his concerns to ombudsmen that he was going to be discharged for the opinions he expressed during the various forums. The plaintiff was of the opinion that the president of Hamilton Standard, defendant Robert Kuhn, directed that the plaintiff was to be discharged. On January 19, 1994, the plaintiff was laid of from his job at Hamilton Standard, which was part of an overall reduction of 50 percent of the Hamilton Standard work force in the early 1990s.[4] The plaintiff subsequently brought suit against United Technologies and eight of its employees. Additional facts will be identified as necessary.

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In count 33 of revision F, wrongful termination, the plaintiff alleged, inter alia, that there is a public policy favoring United Technologies compliance with a code of ethics for all major defense contractors. The code of ethics requires defense contractors to implement programs conducted by ombudsman to encourage employees to express their opinions, attitudes and concerns without fear of retribution as a means of promoting honesty, reducing fraud in defense contracts, providing corporate self criticism and alternative dispute resolution. Revision F also alleges that the plaintiff participated in United Technologies' "straight Talk" and DIALOG" programs and that his participation was protected by the alleged public policy. Furthermore, in or around September, 1993, because of his participation in "Straight Talk" and "DIALOG", Kuhn [or

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[4] In the space and sea systems department, thirty-four of the 290 employees were laid off.

subordinate] retaliated against the plaintiff by issuing a directive to his subordinates to find a way to discharge the plaintiff. The plaintiff also alleges that he was, in fact, wrongfully discharged in retaliation for having participated in "Straight Talk" and "DIALOG" and that this discharge violated the public policy alleged.

The defendants moved to strike count thirty-three, and others, arguing that the count failed to state a claim on which relief may be granted because it alleged no recognized violation of public policy. The trial court, citing *Morris v. Hartford Courant Co.*, 200 Conn. 676, 679, 513 A.2d 66 (1986), granted the motion to strike count 33 because the plaintiff failed to allege

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that his discharge violated a specific statutory or constitutional provision or contravened a judicially conceived notion of public policy.

The plaintiff amended his complaint in revision G to plead over count 33 and to add the allegations that he participated in "Straight Talk" and "DIALOG" at the request of his employer and that his participation in those programs was protected as a matter of public policy by General Statutes §31-104 [9] and 31-105 [10] and represented an

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[9] General Statutes §31-104 provides: "Employees shall have the right of self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choice and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from actual interference, restraint or coercion by employers."

[10] General Statutes §31-105 provides in relevant part: "It shall be an unfair labor practice for an employer; (1) To spy upon or keep under surveillance, whether directly or through agents or any other person, any activities of employees or their representatives in the exercise of the rights set forth in section 31-104; (2) to prepare, maintain, distribute or circulate any blacklist of individuals for the purpose of preventing any such individuals from obtaining or retaining employment because of the exercise by such individuals of any of the rights set forth in section 31-104; (3) to dominate or actually interfere with the formation, existence or administration of any employee organization or association, agency or plan which exists in whole or in part for the purpose of dealing with employers

exercise of his constitutionally
p733...
protected right to free speech. The defendants again moved to strike count 33, which motion the trial court granted stating: "It is this court's opinion that this is a reformulation of the old count which has been previously stricken by the court. It is not sufficient as it is pleaded to sustain a cause of action. I have said this before, and I repeat it again. Sections 31-104 and 31-105 of the Connecticut General Statutes, which are cited as statutory references, I believe, in an attempt to save from

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concerning terms or conditions or employment, labor disputes or grievances, or to contribute financial or other support to any such organization, by any means, including but not limited to the following ... (4) to require an employee or one seeking employment as a condition of employment to reveal membership, past membership or nonmembership in a labor organization, either by the use of written application forms, questionnaire or oral inquires, or to join any company union or to refrain from forming or joining or assisting a labor organization of his own choosing; (5) to encourage membership in any company union or discourage membership in any labor organization by discrimination in regard to hire or tenure or in any term or condition of employment, provided nothing in this chapter shall preclude an employer from making an agreement with a labor organization requiring as a condition of employment membership therein, if such labor organization is the representative of employees as provided in section 31-106; (6) to refuse to bargain collectively with the representatives of employees, subject to the provisions of said section 31-106; (7) to refuse to discuss grievances with representatives of employees, subject to the provisions of said section 31-106; (8) to discharge or otherwise discriminate against an employee because he has signed or filed any affidavit, petition or complaint or given any information or testimony under this chapter; (9) to distribute or circulate any blacklist of individuals exercising any right created or confirmed by this chapter or of members of labor organizations, or to inform any person of the exercise by any individual of such right, or of the membership of any individual in a labor organization for the purpose of preventing individuals so blacklisted or so named from obtaining or retaining employment; or (10) to do any acts other than those enumerated in this section which restrain, coerce or interfere with employees in the exercise of the rights set forth in section 31-104."

my previous striking of this same count, are not applicable. They deal specifically with organizing unions in the work place and unfair labor practice, which is not the situation here. Therefore, this is not a valid statutory basis for the violation of public policy."[11] The trail court did not address the constitutional right to free speech alleged by the plaintiff. The trial court also ordered the plaintiff not to replead his wrongful termination claim.. ...
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Count 34 of revision F alleged wrongful discharge in violation of §31-51q. [13] Specifically the plaintiff alleged, among other things, that his participation in the "Straight Talk" and "DIALOG" programs was protected under §31-51q because it was an exercise of his right to free speech. The defendants moved to strike that count arguing that count 34 failed to allege a cause of action because the subject speech was not protected by the statute, as the plaintiff's work place speech and writings are internal complaints about managerial decisions and are not matters of public concern.

The trial court, in granting the defendants' motion to strike, agreed that the allegations of court 34 of revision F did not state a

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[11]Our review of the trial court's memorandum of decision previously striking count 33 makes no reference to the subject statutes.

[13] Connecticut General Statute 31-51q provides: "Any employer, including the state and any instrumentality or political subdivision thereof, who subjects any employee to discipline or discharge on account of the exercise by such employee of rights *guaranteed by the first amendment of the United States Constitution* or section 3, 4, or 14 of article fi4st of the Constitution of the state, provided such activity does not substantially or materially interfere with the employee's bona fide job performance or materially interfere with the employee's bona fide job performance or the working relationship between the employee and the employer, shall be liable to such employee for damages caused by such discipline or discharge, including punitive damages, and for reasonable attorney's fees as part of the cost of any such action for damages. If the court determines that such action for damages was brought without substantial justification, the court may award costs and reasonable attorney's fees to the employer."

cause of action. The trial court ruled that, pursuant to the allegations, the plaintiff was not acting as a citizen opining about a matter of public concern but as an employee protesting the rumored sale of one of United Technologies' product lines and the bonuses received by senior management.

Again, the plaintiff repleaded his complaint adding the following allegations to count 34. Revision G alleges that central among the plaintiff's themes in speaking out through "Straight Talk" and "DIALOG" was his concern as a citizen about management dishonesty and fraud that was harmful to employees, the government and taxpayers and that United Technologies managers were knowingly allocating government and taxpayer generated revenue and state aid for their personal gain, to the detriment of the state's economy.

Once more, the defendants moved to strike count 34 because the type of speech at issue does not fall within the

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protection afforded by §31-51q. The trial court again agreed with the defendants, stating that, regardless of the spin the plaintiff put on the allegations, they did not rise above the private nature of the employer-employee relationship.

To determine whether the plaintiff waived his right to challenge the trial court's striking of count 34 of revision G by pleading over after the striking of the count from revision F, we must determine whether there is a material difference between the two versions of the count. See *Parsons v. United Technologies Corp.*, supra, 243 Conn. 74. We conclude that in repleading count 34, the plaintiff alleged he was exercising his right to speak not just as a United Technologies employee concerned abut managerial decisions but as a citizen concerned about fraud harmful to taxpayers and the government. The allegations of revision G are materially different and the plaintiff did not waive his right to appeal the striking of count 34 from revision G.

B

We now turn to the issue of whether the trial court properly granted the defendants' motion to strike counts 33 and 34 of revision G. The plaintiff claims that the trial court improperly granted the defendants' motion to strike count 33, which alleged that United Technologies wrongfully discharged him for exercising his constitutional right to free speech in violation of § 31-104 and 31-105,

presidential executive orders, congressional acts and federal regulations, and count 34, which alleged that United Technologies wrongfully discharged him because his participation in "Straight Talk" and "DIALOG" was protected by §31-51q. To determine whether the plaintiff is correct, we must examine the allegations of the plaintiff's revised complaint and the law set
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forth in *Sheets v. Teddy's Frosted Foods, Inc.*, 179 Conn. 471, 480, 427 A.2d 385 (1980), and its progeny.

"In *Sheets v. Teddy" Frosted Foods, Inc.*, [supra, 179 Conn. 480], in an effort to balance the competing interests of employers and employees, we recognized a public policy limitation on the traditional employment at-will doctrine. *Antinerella v. Rious*, 229 Conn. 479, 492, 642 A.2d 699 (1994). In *Sheets*, we sanctioned a common law cause of action for wrongful discharge in situations in which the reason for the discharge involved impropriety ... derived from some important violation of public policy. *Sheets v. Teddy's Frosted Foods, Inc.*, supra [475]; see *Morris v. Hartford Courant Co.*, [supra, 200 Conn. 679]; *Magnan v. Anaconda Industries, Inc.*, 193 Conn. 558, 572, 479 A.2d 781 (1984). In *Morris v. Hartford Courant Co.*, supra, 680, we recognized the inherent vagueness of the concept of public policy and the difficulty encountered when attempting to define precisely the contours of the public policy exception. In evaluating claims, we look to see whether the plaintiff has ... alleged that his discharge violated any explicit statutory or constitutional provision ... or whether he alleged that his dismissal contravened any judicially conceived notion of public policy. ... *Antineralla v. Rious*, supra 492, quoting *Morris v. Hartford Courant Co.*, supra, 680, ...*Faulkner v. United Technologies Corp.* [supra, 240 Conn. 580-581]." *Parsons v. United Technologies Corp.*, supra, 243 Conn. 76-77.

"The public policy exception to the general rule allowing unfettered termination of an at-will employment relationship is a narrow one that is only to be invoked when the reason for [the employee's] discharge ... involves impropriety derived from some important violation of public policy. *Carbone v. Atlantic Richfield Co.*, 204 Conn. 460, 470, 528 A.2d 1137 (1987). We are mindful that courts should not lightly intervene to
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impair the exercise of managerial discretion or to foment unwarranted litigation. *Sheets v. Teddy's Frosted Foods, Inc.*, supra, 179 Conn. 477. Nevertheless, when there is a relevant state statute we should not ignore the statement of public policy that it represents. Id. 480" *Parsons v. United Technologies Corp.*, supra, 243 Conn. 79.

"We need not decide whether violation of state statute is invariably a prerequisite to the conclusion that a challenged discharge violates public policy. Certainly when there is a relevant state statute we should not ignore the statement of public policy that it represents. ... we did not however, preclude the use of a federal statute to demonstrate that a discharge violated public policy." *Faulkner v. United Technologies Corp.*, supra, 240 Conn. 583. In *Faulkner*, in concluding that violations of law were a proper basis for alleging a wrongful discharge claim, our Supreme Court cited numerous cases from other jurisdictions in which their courts identified federal statutes and regulations and constitutional provisions the violation of which contravened an important public policy for purposes of alleging a wrongful discharge claim. See id, 586-87.

I

To determine whether the plaintiff here alleged facts sufficient to state that his discharge involved an impropriety derived from some important violation of public policy, we look to the allegations of count 33 in revision G. "We do so mindful of the well settled law regarding pleadings. The interpretation of pleadings is always a question for the court ... *Cahill v. Board of Education*, 198 Conn. 229, 236, 502 A.2d 410 (1985). The modern trend, which is followed in Connecticut, is to construe pleadings broadly and realistically, rather than narrowly and p739

technically ... *Beaudoin v. Town Oil co.*, 207 Conn. 575, 587-88, 542 A.2d 1124 (1988), and cases cited therein. Although essential allegations may not be supplied by conjecture or remote implication; *Cahill v. Board of Education*, supra 236; the complaint must be read in its entirety in such a way as to give effect to the pleading with reference to the general theory upon which it proceeded, and do substantial justice between the parties. *Price v. Bouteiller*, 79 Conn. 255, 257, 64 A.227 (1906). As long as the pleadings provide sufficient notice of the facts claimed and the issues to be tried and do not surprise or prejudice the opposing party, we will not conclude that the complaint

is insufficient to allow recovery." *Parsons v. United Technologies Corp.*, supra, 243 Conn. 82-83. "Although the motion to strike admits all facts well pleaded, it does not admit legal conclusions or the truth or accuracy of opinions stated in the pleadings. *Alarm Applications Co. v. Simsbury Volunteer Fire Co.*, 179 conn. 541, 545, 427 A.2d 822 (1980); *Sheiman v. Lafayette Bank & Trust Co.*, 4 Conn. Appl. 39, 42, 492 A.2d 219 (1987); *Green v. Metals Selling corp.*, 3 Conn.App. 40, 41, 484 A.2d 48 (1984);" *Quimby v. Kimberly Clark Corp.*, 28 Conn. App. 660, 664, 613 A.2d 838 (1992).

Count 33 of revision G alleged in pertinent part that the plaintiff was an engineer employed in the space and sea systems department of Hamilton Standard Division of United Technologies. The work performed by the department was done almost exclusively pursuant to defense contracts. United Technologies has an ethics code with which all of it s employees must comply. The code is committed to the highest standards of ethics and conduct of its employees, stockholders, the community and government associates. The code of ethics provides channels of communication that encourage freedom of speech relative to employee opinion and specifies that no retribution will be taken against any employee for engaging in self-expression and open dialogue. The code of ethics was created to comply with presidential executive Order No. 12,526, 3 C.F.R. 378-80 (1985), both of which dealt with defense contractor standards of conduct. The code of ethics supports an ombudsman program and employees are assured that their contributions are protected from retaliation.

Count 33 further alleges that in 1993, as an employee and good citizen, the plaintiff was concerned about management practices that he observed at United Technologies. The plaintiff perceived that United Technologies and its subsidiaries were being managed for near term profit at the expense of the employees, government, the state's economy and taxpayers. The alleged purpose of this management strategy was for immediate financial gain by senior managers. The plaintiff perceived these management practices as excessive, inappropriate, unprofessional, unethical, dishonest, fraudulent and detrimental to the plaintiff, his coworkers, United Technologies, the state's economy and the government. In the plaintiff's opinion, management, out of personal interest, was attempting to secure bonuses for themselves at the expense of corporate interest, the interests of employees and the public good.

Count 33 also alleges the plaintiff expressed his concerns about his perceptions as an employee and good citizen by exercising his constitutionally protected right to free speech as encouraged and invited by United Technologies. The plaintiff expressed his concerns orally at "Straight Talk" and in writing thought the "DIALOG" program without interfering with his job performance or disrupting the workplace. The plaintiff also alleged that he was discharged as a result of expressing his views through the ethics programs and that as a result of his discharge he suffered damages and emotional distress.
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Count 33 also includes the allegation that the plaintiff's participation in "Straight Talk" and "DIALOG" was protected as a mater of public policy because it was made pursuant out §31-104 and 31-105 and in the exercise of constitutionally protected free speech.

The issue before us is whether the plaintiff's dismissal violated an important public policy derive from General Statues §31-104, 31-105, and 31-51q, 48 C.F.R. §203.7 or Executive Order No. 12,526 or violated the plaintiff's constitutional right of free speech.

In ruling from the bench on the defendants' second motion to strike count 33 from revision G, the trial court stated the §31-104 and 31-105 were inapplicable to the circumstances alleged in the plaintiff's complaint because those statutes apply to union organization and unfair labor practices. In striking count 34, the trial court concluded that the plaintiff's speech was not protected by §31-51q because the allegations of the count did not rise to the level beyond the private nature of the speech at issue. We agree with the trial court.

In *Faulkner v. United Technologies Corp.*, supra, 240 Conn. 587, our Supreme Court cited *Novosel v. Nationwide Ins. Co.*, 721 F.2d 894, 898-99 (3d Cir. 1983), in support of a growing trend among jurisdictions to find support for the tort of wrongful termination exception to the at-will employment rule in federal statutes and the constitution of the United States. In *Novosel*, the Court of Appeals for the Third Circuit reversed the District Court's granting, pursuant to rule 12 (b) (6), of the federal Rules of Civil Procedure, a motion to dismiss a wrongful termination claim predicated on public policies

espoused by the first amendment to the United States constitution.[14] We therefore conclude that if the plaintiff here properly asserted a

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violation of the right to free speech based upon the first amendment, he could properly allege a cause of action for wrongful termination. For the following reasons stated, however, the plaintiff's expression of his opinions at "Straight Talk" and "DIALOG" were not constitutionally protected free speech.

The plaintiff claims that to distinguish himself from the rule governing employee-employer relationships; see *Sheets v. Teddy's Frosted Foods*, supra, 179 Con. 477; he was acting as a concerned citizen when he expressed his opinions about managerial decisions being made at United Technologies. This allegation is a legal conclusion, not an allegation of fact. "The question of whether a particular statute ... applies to a given set of facts is a question of statutory interpretation ... statutory interpretation presents a question of law for the court." *Meadows v. Higgins*, 49 Conn. App. 286, 291, 714 A.2d 51, cert. Granted on other grounds, 247 Conn. 910, 719 A.2d 904 (1988). When the plaintiff spoke, he was not exercising a right enjoyed by the general citizenry but was exercising a privilege granted him by his employer. The forums alleged by the plaintiff were not open to the general public. The privilege that the plaintiff enjoyed was to express his concerns over the manner in which United Technologies was being operated. Indeed, the plaintiff's alleged expression of concern were, for the most part, conclusive, not fact specific, and based on his perceptions of how United Technologies was managing its business. Such allegations are clearly distinguishable from *Sheets* and *Faulkner* where the

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plaintiffs alleged they were discharged for refusing to follow employer directives to violate laws, which would have subjected them to criminal prosecutions.

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[14]The plaintiff in Novesel disagreed with his employer's legislative agenda and refused to lobby the state legislature on his employer's behalf. *Novosel v. Nationwide Ins. Co.*, supra 721 F.2d 896. The plaintiff was subsequently discharged because of his refusal to support his employer's position.

The allegations of count 34 differ from the allegations of count 33 in that the plaintiff alleges a violation of §31-51q rather than the alleged statutory allegations discussed previously. Section 31-51q "applies to speech activities and speech that occur at the workplace because there are no words in the statute limiting the place at which the constitutionally protected activity occurs, and other legislation governing the same general subject matter includes speech occurring in the workplace. The real question in this case, however, is not governed by where the activity occurred but of what the activity consisted. Section 31-51q protects only that activity guaranteed safe from private employer interference by either certain sections of our constitution or by the federal constitution. If the rights exercised by the employee do not fall into the specified constitutional category, the statute cannot apply. Not all speech is guaranteed to be 'free'." *Cotto v. United Technologies Corp.*, 48 Conn App. 618, 628, 711 A.2d 1180, cert. Granted, 245 Conn. 915, 718 A.2d 19 (1998).

To be protected by the first amendment, 'the speech must be on a matter of public concern, and the employee's interest in expressing himself on this matter must not be outweighed by any injury the speech could cause' to employee relationships. *Waters v. Churchill*, 511 U.S. 661, 668, 114 S. Ct. 1878, 128 L. Ed. 2d 686 (1994). Restrictions on employee-employer speech are more justified than restrictions on the speech of the public

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at large. Id., 672." *Cotto v. United Technologies Corp., supra, 48 Conn. App. 630.* Because the plaintiff's allegations concern the expression of his opinions as to perceived wrongdoing on the part of upper management at United Technologies, it is a matter between him and his employer and, thus, is not protected speech.[16]

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[16] We have reviewed presidential Executive Order No. 12,526 and 48 C.F.R. §203.7 (1985) and concluded that they are concerned with fraud and dishonesty in government contracts, which the plaintiff has not alleged. Therefore, the executive order and the federal regulation are not applicable to the plaintiff's right to free speech.

Decision of Connecticut Superior Court

NO. CV 94-0460869S	:	SUPERIOR COURT
ROGER EMERICK	:	JUDICIAL DISTRICT OF HARTFORD/ NEW BRITAIN AT NEW BRITAIN
V.		
ROBERT KUHN, ET AL	:	JUNE 14, 1994

MEMORANDUM OF DECISION ON MOTION TO STRIKE

I. PROCEDURAL BACKGROUND (omitted)

II. LAW (re: Motions to Strike - omitted)

III. DISCUSSION

1. Wrongful Discharge in Violation of Public Policy (Counts 33, 35, and 36)

UTC moves to strike counts 33, 35, and 36 of the plaintiff's complaint claiming that the plaintiff has not stated a cause of action for wrongful discharge in violation of public policy. In count 33 the plaintiff alleges that the violation of public policy is "favoring compliance with major defense contractor code of ethics and programs therein run by ombudsman." In counts 35 and 36 the plaintiff alleges that the violation of public policy is "due process of law where implied by contract" or " notice of misconduct meriting dismissal.".

Defendant argues that the plaintiff is an employee at will; for an exception to termination at will, there must be a recognized public policy exception. Such exceptions, defendant claims, apply only to terminations that violate specific statutory or constitutional provisions. Defendant UTC further argues that no such exception has been pled by the plaintiff in any of these three counts.

Plaintiff argues that in these three counts he alleges UTC's violation of a host of recognized public polices, including a major defense contractor's Code of Ethics, due process of law where implied by contract, and notice of misconduct meriting dismissal. Specifically, plaintiff cites a United States presidential executive order, the Code of Federal Regulations pertaining to defense contractors, and the Sentence Reform Act of 1988, as it pertains to corporate development to develop

internal programs to prevent and detect internal misconduct. In sum, it appears that plaintiff alleges that he was encouraged to participate in an open forum in the workplace, did so, and was terminated for that participation. Based on the above-cited policies, plaintiff contends this is a violation of public policy and therefore, an exception to the employment-at-will doctrine.

Plaintiff cites two New Jersey cases to support his position. Plaintiff cites no Connecticut cases which recognize any of the above-cited policies as exceptions, and during oral argument, admitted that he was not aware of any such case in Connecticut.

Sheets v. Teddy's Frosted Foods, Inc., 179 conn. 471 (1980) has long set the standard in Connecticut for what will not constitute a recognized public policy exception to the employment-at-will doctrine. That standard is an extremely narrow one. As state in Sheets, "The issue then becomes the familiar common-law problem of deciding where and how to draw the line between claims that genuinely involve the mandates of public policy and are actionable, and ordinary disputes between employee and employer that are not." Id. At 477. This line is drawn narrowly and "supported by mandates of public policy derived directly from the applicable state statutes and constitutions." Id. At 476. Admittedly, "given the inherent vagueness of the concept of public policy it is often difficult to define precisely the contours of the exception." Morris v. Hartford Courant Co., 200 Conn. 676, 689 (1986). Still, it is necessary for the plaintiff to allege that the discharge violated a specific statutory or constitutional provision or contravened a judicially conceived notion of public policy. Id.

In counts 33, 35, and 36, this court is not persuaded that the plaintiff alleged a recognized exception based either in statute, the constitution, or judicial opinion. Codes of ethics, due process of law where implied by contract, and notice of misconduct meriting dismissal even if allegedly premised on presidential orders, the Code of Federal Regulations, or the Sentence Reform Act do not rise to the level of a recognized public policy exception. This court does not intend to expand Connecticut's recognized public policy exceptions. Accordingly, defendant UTC's Motion to Strike counts 33, 35, and 36 is granted.

B. Violation of 31-51q C.G.S. Count 34

Defendant UTC moves to strike count 34 of plaintiff's Revised Complaint F which alleges "wrongful discharge by violation of C.G.S. 31-51q". The plaintiff alleges in this count that his participation in two in-house programs, "Straight Talk" and "DIALOG", caused his discharge and as such, was a violation of the statute.

Section 31-51q of the Connecticut General Statutes states in part: "Any employer ... who subjects any employer to discipline or discharge on account of the exercise by such employee of rights guaranteed by the first amendment of the United States Constitution or Section 3, 4, or 4 of article first of the constitution of the state ... shall be liable to such employee for damages caused by such discipline or discharge."

Defendant UTC argues that in order to constitute such a statutory violation, such speech must not address an individual's own personal concerns, but must pertain to a matter of public concern and in the alternative argues that the statue does not apply to speech occurring on private property in the context of the employment relationship. Because this court agrees with the defendant UTC that the plaintiff's speech does not pertain to a matter of public concern, it is unnecessary to address whether or not the statute applies when the speech occurs on private property.

In accord with Schnabel v. Tyler, 230 Conn. 735, 751, UTC argues that "When a public employee speaks not as a citizen upon matters of public concern, but instead as an employee upon matters only of personal interest, absent the most unusual circumstances, a ... court is not the appropriate forum in which to review the wisdom of a personnel decision ... in reaction to the employee's behavior."

Plaintiff contends count 34 is legally sufficient; he has alleged a violation of the statute and alleged that his speech did not interrupt the workplace. He further argues that if this court does not find that argument persuasive, his alternative argument is that his speech was protected by the federal and state constitutions. Plaintiff then claims that his position is confirmed by two superior court decisions: Olson v. Accessory Controls & Equipment Corp, 1994 Conn. Super. 398 (Corradino, j. 2/15/94) and Bakelman v Paramount Card Inc, 9 CSCR 766 (Lavine, J. 7/24/94), both of which follow Anderson v E&J Gallo Winery, 861 F.2d 1389 (1985).

In Olson, the court (Corradino, J) found that in adoption §31-51q, the "legislature did intend to create a cause of action against

employers for infringement of employee speech." The court went on to state "if speech activity occurs on the employer's premises, it is more likely that [a defense] would arise. But that has nothing to do with whether Section 31-51q provides a cause of action in the first place to an employee and is not raised by the motion to strike." In Bakelman, the court (Lavine, J.) found that this statutory section applied to any employer, private and /or public. (Neither party seems to contest this interpretation.) The court also found that the conduct alleged must be a "matter of public concern". See Connick v. Myers, 461 U.S. 138, 146-148 (1982). The Bakelman court suggests a broad inquiry: "whether the plaintiff, in acting as he or she did, was acting as a citizen pursuing a public issue, or acting instead as a private employee pursuing private interests." Id.

Adopting the Bakelman analysis, a case on which the plaintiff himself relies in this instant matter, this court finds that the plaintiff has not alleged that he was acting as a citizen pursuing a matter of public concern. In fact, introductory paragraphs contained in plaintiff's complaint and referred to in this specific count (Paragraph B2.1) involve plaintiff's protest about one of UTC's product lines and protest about bonuses to certain UTC executives.

In order for the plaintiff "to show that constitutionally protected rights are at issue, he must allege that in engaging in the speech at issue the plaintiff was exercising his or her rights as a citizen with respect to a 'matter of public concern'." Bakelman, supra. "Whether an employee's speech touches on a matter of public concern must be determined by the content, form, and context of a given statement." Vince v. Worrell, Superior Court, Judicial District of Hartford/New Britain at Hartford, Docket No. CV 86-031986 (July 14, 1992, Schaller,J.). See also Schnabel, supra. "The issue to be addressed is not simply whether the subject matter of the employee's complaints touches on a matter of public concern generally; the issue is whether acting as he did, an employee was acting as a citizen attempting to speak out on a public issue, or whether the employee was instead attempting to resolve a private dilemma relating to employment." Bakelman, supra.

In the present case, the allegations do not support a finding that the plaintiff was acting was a citizen pursuing a public issue. Rather, the allegations indicate the plaintiff was expressing his disapproval of

management decisions within the company. He was specifically concerned with the effect of the managements's policy decisions on his own department with the company. The fact that the employer sponsored "Straight Talk" and "DIALOG" does not affect the determination of whether the speech was a matter of public concern. Additionally, the plaintiff's allegation that he was speaking as a citizen pursuing a public issue on behalf of himself, other employees, the company, the corporation, the government and the community is not supported by the factors as alleged. The court does not have to accept the plaintiff's legal conclusions or opinions. Mingachos v CBS, Inc., supra at 108. The allegations, viewed with reference to the content, form, and context of the plaintiff's statement, describe nothing more than an employee expressing his dissatisfaction with internal management decisions.

The plaintiff concedes that he "realized that because of a general business decline that cost cutting measures would have to be implemented, to include layoffs and other appropriate cost reduction activity." (Plaintiff's Complaint, paragraph B1) The allegations show that the plaintiff did not like the cost cutting measures chosen by the defendant because he believed they would adversely affect his department, and presumably his job. Because the plaintiff's speech does not pertain to a matter of public concern in violation of General Statutes §31-51q, the defendants's Motion to Strike count 34 is granted.

[remainder of memorandum addressing claims not applicable to this petition omitted.]

s/ J. Handy

Order on Petition for Certification to Appeal

SUPREME COURT
STATE OF CONNECTICUT

NO. PSC-98-0361
Roger Emerick
v. Robert Kuhn et al.

ORDER ON PETITION FOR CERTIFICATION TO APPEAL

On consideration of the petition by the plaintiff for certification to appeal from the Appellate Court (52 Conn. App. [AC 16412], it is hereby ordered that said petition be, and the same is hereby denied.

Norcott, J., did not participate in the consideration or decision of this petition for certification.

BY THE COURT,
s/Alan M Gannuocio
ASSISTANT CLERK-APPELLATE

Dated: July 7, 1999
Notice Sent: July 8, 1999
Clerk, Superior Court, New Britain, CV94 460869
Clerk, Appellate Court
Reporter of Judicial Decisions
SAO
Roger Emerick, pro se
Day, Berry, & Howard
Roger Emerick, in support of petition

The First Amendment of the United States Constitution

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Connecticut General Statute 31-51q

"Any employer, including the state and any instrumentality or political subdivision thereof, who subjects any employee to discipline or discharge on account of the exercise by such employee of rights *guaranteed by the first amendment of the United States Constitution* or section 3, 4, or 14 of article fi4st of the Constitution of the state, provided such activity does not substantially or materially interfere with the employees's bona fide job performance or materially interfere with the employee's bona fide job performance or the working relationship between the employee and the employer, shall be liable to such employee for damages caused by such discipline or discharge, including punitive damages, and for reasonable attorney's fees as part of the cost of any such action for damages. If the court determines that such action for damages was brought without substantial justification, the court may award costs and reasonable attorney's fees to the employer."

Code of Federal Regulations 48 CFR 203.7 (Excerpts)

Contractor Standards of Conduct - Policy: Government contractors must conduct themselves with the highest degree of integrity and honesty. Contractors should have standards of conduct and internal control systems that - (2) promote such standards; ... 203.7001(a1) A written code of business ethics and conduct and ethics training program for all employees.

Defense Industry Initiatives pursuant Executive Order 12526

Excerpted from

"A Quest for Excellence
Final Report to the President "
June, 1986

Appendix M - Defense Industry Initiatives
on Business Ethics and Conduct

The defense industry companies who sign this document already have, or commit to adopt and implement, a set of principles of business ethics and conduct that acknowledge and address their corporate responsibilities under federal procurement laws and to the public. Further, they accept the responsibility to create an environment in which compliance with federal procurement laws and free, open, and timely reporting of violations become the felt responsibility of every employee in the defense industry.

In addition to adopting and adhering to this set of six principles of business ethics and conduct, we will take the leadership in making the principles a standard for the entire defense industry.

I. Principles

1. Each company will have and adhere to a written code of business ethics and conduct.
2. The company's code establishes the high values expected of its employees and the standard by which they must judge their own conduct and that of their organization; each company will train its employees concerning their personal responsibilities under the code.
3. Each company will create a free and open atmosphere that allows and encourages employees to report violations of its code to the company without fear of retribution for such reporting.
4. Each company has the obligation to self-govern by monitoring compliance with federal procurement laws and adopting procedures for voluntary disclosure of violations of federal

procurement laws and corrective actions taken.

5. Each company has a responsibility to each of the other companies in the industry to live by standards of conduct that preserve the integrity of the defense industry.
6. Each company must have public accountability for its commitment to these principles.

II. Implementation: Supporting Programs

While all companies pledge to abide by the six principles, each company agrees that it has implemented or will implement policies and programs to meet its management needs.

Principle 1: Written Code of Business Ethics and Conduct

A company's code of business ethics and conduct should embody the values that it and its employees hold most important; it is the highest expression of a corporation's culture. For a defense contractor, the code represents the commitment of the company and its employees to work for its customers, shareholders, and the nation.

It is important, therefore, that a defense contractor's written code explicitly address that higher commitment. It must also include a statement of the standards that govern the conduct of all employees in their relationships to the company, as well as in their dealings with customers, suppliers, and consultants. The statement also must include an explanation of the consequences of violating those standards, and a clear assignment of responsibility to operating management and others for monitoring and enforcing the standards throughout the company.

Principle 2; Employees' Ethical Responsibilities

A company's code of business ethics and conduct should embody the basic values and culture of a company and should become a way of life, a form of honor system, for every employee. Only if the code is embodied in some form of honor system does it become more than mere words or abstract ideals. Adherence to the code becomes a responsibility of each employee both to the company and to fellow employees. Failure to live by the code, or to report infractions, erodes the trust essential to personal accountability and an effective corporate business ethics system.

Codes of business ethics and conduct are effective only if they are

fully understood by every employee. Communication and training are critical to preparing employees to meet their ethical responsibilities. Companies can use a wide variety of methods to communicate their codes and polices and to educate their employees as to how to fulfill their obligations. Whatever methods are used - broad distribution of written codes, personnel orientation programs, group meetings, videotapes, and articles - it is critical that they ensure total coverage.

Principle 3: Corporate Responsibility to Employees

Every company must ensure that employees have the opportunity to fulfill their responsibility to preserve the integrity of the code and their honor system. Employees should be free to report suspected violations of code to the company, without fear of retribution for such reporting.

To encourage the surfacing of problems, normal management channels should be supplemented by a confidential reporting mechanism.

It is critical that companies create and maintain an environment of openness where disclosures are accepted and expected. Employees must believe that to raise a concern or report misconduct is expected, accepted, and protected behavior, not the exception. This removes any legitimate rationale for employees to delay reporting alleged violations or for former employees to allege past offenses by former employers or associates.

To receive and investigate employee allegations of violations of the corporate code of business ethics and conduct, defense contractors can use a contract review board, an ombudsman, a corporate ethics or compliance office or other similar mechanism.

In general, the companies accept the broadest responsibility to create an environment in which free, open and timely reporting of any suspected violations becomes the felt responsibility of every employee.

Principle 4; Corporate Responsibility to the Government

It is the responsibility of each company to aggressively self-govern and monitor adherence to its code and to federal procurement laws. Procedures will be established by each company for voluntarily reporting to appropriate government authorities violations of federal procurement laws and corrective actions.

In the past, major importance has been placed on whether internal company monitoring has uncovered deficiencies before discovery by government audit. The process will be more effective if all monitoring efforts are viewed as mutually reinforcing and the measure of performance is a timely and constructive surfacing of issues.

Corporate and government audit and control mechanisms should be used to identify and correct problems. Government ad industry share this responsibility and must work together cooperatively and constructively to ensure compliance with federal procurement laws and to clarify any ambiguities that exist.

Principle 5: Corporate Responsibility to the Defense Industry

Each company must understand that rigorous self-governance is the foundation of these principles of business ethics and conduct and of the public's perception of the integrity of the defense industry.

Since methods of accountability can be improved through shared experience and adaptation, companies will participate in an annual intercompany "Best Practices Forum" that will bring together operation and staff managers from across the industry to discuss ways to implement the industry's principles of accountability.

Each company's compliance with the principles will be reviewed by a Board of Directors committee comprised of outside directors.

Principle 6: Public Accountability

The mechanism for public accountability will require each company to have its independent public accountants or similar independent organization complete and submit annually the attached questionnaire to an external independent body which will report the results for the industry as a whole and release the data simultaneously to the companies and the general public.

This annual review, which will be conducted for the next three years, is a critical element giving force to these principles and adding integrity to this defense industry initiative as a whole. Ethical accountability, as a good-faith process, should not be affirmed behind closed doors. The defense industry is confronted with a problem of public perception - a loss of confidence in its integrity - that must be addressed publicly if the results are to be both real and credible, to the government and public alike. It is in this spirit of public accountability

that this initiative has bee adopted and these principles have been established.

Questionnaire:

1. Does the company have a written code of business ethics and conduct?
2. Is the code distributed to all employees principally involved in defense work?
3. Are new employees provided any orientation to the code?
4. Does the code assign responsibility to operating management and others for compliance with the code?
5. Does the company conduct employee training programs regarding the code?
6. Does the code address standards that govern the conduct of employees in their dealings with suppliers, consultants and customers?
7. Is there a corporate review board, ombudsman, corporate compliance or ethics office or similar mechanism for employees to report suspected violations to someone other than their direct supervisor, if necessary?
8. Does the mechanism employed protect the confidentiality of employee reports?
9. Is there an appropriate mechanism to follow-up on reports of suspected violations to determine what occurred, who was responsible, and recommended corrective and other actions?
10. Is there an appropriate mechanism for letting employees know the result of any follow-up into their reported charges?
11. Is there an ongoing program of communication to employees, spelling out and re-emphasizing their obligations under the code of conduct?
12. What are the specifics of such a program?
    a. Written Communication?
    b. One on one communication
    c. Group meetings?
    d. Visual aids?
    e. Others?

60-20-86 Letter by UTC CEO to Employees

INTERNAL CORRESPONDENCE UNITED TECHNOLOGIES

[To/From List omitted - was passed to all UTC employees]
June 20, 1986

Subject: Employee Communications/Defense Industry Initiatives

At our meeting on April 5, we asked Sid McKenna to develop a corporate-wide employee communications program designed to enable UTC employees to raise concerns they have about the corporation. Our intent was to encourage questions on all issues of concern to employees throughout UTC, including issues arising under our Government Contracting Policy of June 1985.

In the mean time, on June 9, UTC became a signatory to the Defense Industry Initiatives on Business Ethics and Conduct. In so doing, we committed to institute an ombudsman or similar program that provides a confidential reporting mechanism to encourage employees to report violations of our Government Contracting Policy. Our intent is to fulfill that commitment in the context of the broad based employee communication program we agreed to on April 5.

Accordingly, the UTC Board of Directors has endorsed establishment of the office of Vice President - Ombudsman. I am pleased to announce the election of Walt Eells to that office. Walt will report to Ed Large and will have direct access to me for guidance and advice on any matter that he decides should have my attention.

The Vice President - Ombudsman has the authority to analyze, and assure resolution of concerns that have potential corporate-wide impact, particularly those that could affect UTC's relationship with government and commercial customers, or its reputation as an outstanding place of employment. Walt's broad experience in both operations and staff positions makes him particularly well suited to this important assignment.

As an additional step to insure that we are responsive and open to the needs of UTC employees, we are implementing a corporate-wide communication program called DIALOG. DIALOG is designed to give employees a supplemental means of expressing confidentially any concern they may have with assurance that concern will be addressed, with no retribution or reprisal for raising it.

Each unit is requested to install DIALOG in North American operations on August 1. By July 15 I would like to have your plan for implementing DIALOG, including the way you propose to handle the interface between your programs and the UTC Vice President - Ombudsman. A description of how DIALOG will work at the Corporate Office is included in an attachment along with a list of the key elements required in each of your programs. Also attached for your guidance are a copy of the position description for descriptions for the UTC Vice President - Ombudsman and a draft letter for your possible use in announcing the program in your units.

It is Walt's additional responsibility to provide whatever guidance and assistance you need to install the DIALOG program or to establish an ombudsman's office.

s/Robert F. Daniell [Chairman, CEO UTC]
Attachments

UTC Code of Ethics (excerpts)

[In Order appearing in Code]

A Message from the Chairman

Dear Fellow Employee

This is your personal copy of United Technologies' Code of Ethics, which states the corporate principles and defines the standards of conduct that are the foundation of our worldwide business operations. This Code of Ethics has been published as a reaffirmation of the principles and standards that have guided our Corporation since its founding in 1929. The Code cannot, and does not, cover every situation in which choices and decisions must be made. Other company policies, practices and procedures, as well as good common sense, also apply. Each of us as employees has a personal responsibility to abide by all these standards.

Our Corporation is committed to maintaining the highest level of integrity in its business dealings with people, organizations and governments wherever we operate. UTC has an outstanding reputation for honesty and the highest ethical standards, a reputation that you and your fellow employees at UTC have earned over the years. We can and should take great pride in our reputation, and we must commit ourselves to its continuation as the basis for our future success in an increasingly complex and expanding global business environment.

We must remember that misconduct by only a few can discredit our Corporation, harm our reputation and reflect poorly on all of us. Misconduct is often motivated not by personal gain, but rather by the belief that it is somehow benefitting UTC. This is a mistaken belief; unlawful or improper business conduct can only harm our Corporation.

To ensure that our Code of Ethics is properly administered, UTC has established the Business Practices Office as an oversight function, with a network of Business Practice Officers located at each operating unit worldwide. The purpose of this network is to provide a specific point of contact for obtaining information, guidance and interpretation relative to our standards of conduct, and to provide a mechanism for assuring compliance.

In summary, my message is simple and direct. In the conduct of

UTC business, observance of the law is a requirement without exception, but that is not enough. We must also make ethical choices, and of course strictly adhere to company policies and practices. I expect you to read our Code of Ethics and apply it to your work. If you have any questions about how our principles, standards or policies apply, I expect you to seek answers from your supervisor or the Business Practices Officer.

The continuing success of UTC in maintaining our leadership in the world markets we serve is dependent upon maintaining and enhancing our reputation, a goal that is largely in your hands.

Sincerely, s/Robert Daniell [Chairman and CEO UTC]

Corporate Principles

United Technologies is committed to the highest standards of ethics and business conduct. This encompasses our relationships with our customers, our suppliers, our shareholders, our competitors, the communities in which we operate, and with each other as employees at every organizational level. These commitments and the responsibilities they entail are summarized here:

Our Customers

Our primary responsibility is to those who use our products and services. We are committed to providing high quality and value, fair prices and honest transactions. We will deal both lawfully and ethically with all our customers.

Our Employees

We are committed to treating one another fairly, and to maintaining employment practices based on equal opportunity for all employees. We will respect each other's privacy and treat each other with dignity and respect irrespective of age, race, color, sex, religion, or nationality. We are committed to providing safe and healthy working conditions and an atmosphere of open communications for all our employees.

Our Suppliers

We are committed to dealing fairly with our suppliers. We will emphasize fair competition, without discrimination or deception, in a manner consistent with long-lasting business relationships.

Our Shareowners

We are committed to providing a superior return to our shareowners, and to protecting and improving the value of their

investment through the prudent utilization of corporate resources and by observing the highest standards of legal and ethical conduct in all our business dealings.

Our Competitors

We are committed to competing vigorously and fairly for business, and to basing our efforts solely on the merits of our competitive offerings.

Our Communities

We are committed to being a responsible corporate citizen of the worldwide communities in which we reside. We will abide by all national and local laws, and we will strive to improve the well-being of our communities through the encouragement of employee participation in civic affairs and through corporate philanthropy.

Standards of Conduct

Introduction

Our Code of Ethics, comprised of our Corporate Principles and these Standards of Conduct, governs our business decisions and actions. The integrity, reputation, and profitability of United Technologies ultimately depend upon the individual actions of our employees, representatives, agents and consultants all over the world. Each employee is personally responsible and accountable for compliance with our Code. In addition, any representatives, agents or consultants utilized by the Corporation will be prohibited from acting on its behalf in any manner which is inconsistent with our Code of Ethics or any applicable laws or regulations.

These Standards of Conduct serve to assist in defining our ethical principles, and are not all-encompassing. The Standards must be interpreted within the framework of the laws and mores of the jurisdictions in which we operate, as well as in the light of UTC Policies and good common sense. Reasons such as "everyone does it," or "the competition is doing it," or "it's not illegal" are unacceptable as excuses for violating our Standards. We must each be mindful of avoiding at all times, on and off the job, circumstances and actions that give even the appearance of an impropriety or wrongdoing which could discredit the Corporation.

These Standards of Conduct will be enforced equitably at all organizational levels.

Outline	Standards of Conduct	
1.0 Customers & Suppliers	1.1	Conflicts of Interest
	1.2	Antitrust Compliance
	1.3	U.S. Government Procurement
	1.4	Product Quality and Safety
	1.5	marketing and Selling
	1.6	Consultants, Representatives and Agents
	1.7	Protection of Proprietary Information
	1.8	suppliers, Vendors and Subcontractors
	1.9	
	1.10	Error Reconciliation
2.0 Employees	2.1	Equal Employment Opportunity
	2.2	Workplace Environment
	2.3	Drug and Alcohol Abuse
	2.4	Employee Privacy
	2.5	Open Communication
	2.6	Employee Development
	2.7	Compensation and Benefits
3.0 Shareholders	3.1	Return on Investment
	3.2	Protection of Assets
	3.3	Accuracy of Company Records
	3.4	Shareowner Communications
4.0 Worldwide Communities	4.1	Political Contributions
	4.2	Employee Involvement in the Political Process
	4.3	Export Control
	4.4	Foreign Corrupt Practices Act
	4.5	International Boycotts and Restrictive Trade Practices
	4.6	Local Laws and Customs
	4.7	Environmental Issues
	4.8	Community Support

5.0 Competitors	5.1 5.2 5.3	Antitrust Laws Competitive Information Marketing, Selling and Advertising
6.0 Employee Responsibilities	6.1 6.2	Compliance Reporting Violations

[Text From Selected Sections Follows]

1.3 U.S. Government Procurement

As a supplier to the United States Government, the Corporation expects all UTC employees and any consultants used by the Corporation to comply with the laws and regulations governing Government Procurement.

The UTC Policy statement on Business Ethics and Conduct in Contracting With the United Government provides specific guidelines and requirements associated with government contracting. Special care must be taken to comply with the unique and special rules of the Government procurement process and to ensure the accuracy of all data submitted to the U.S. Government.

The Corporation is also committed to compliance with foreign government procurement laws which are applicable to UTC business activities outside the United States.

2.5 Open Communication

UTC will provide its employees with timely information on business results, product performance, customer relations and employee achievements. Communication channels will be provided that encourage self-expression and open dialog relative to employee opinions, attitudes and concerns.

The Corporation is committed to supporting the UTC Ombudsman's authority to review employees' concerns and to ensure proper management response. No retribution will be taken against any employee for contacting the UTC Ombudsman, any level of supervision, or Human Resources representatives to express concerns with business polices or practices. However, the use of these communization channels to report a wrongdoing will not absolve an

employee from accountability for personal involvement in such wrongdoing.

6.1 Compliance

It is the responsibility of all UTC employees to comply with these Standards of Conduct and implementing policies. Any questions of applicability or interpretation should be addressed to cognizant supervision, the entity legal counsel, or the UTC Business Practice Office.

Failure to comply with these Standards and the associated UTC policies will result in appropriate employee sanctions, to be determined by the cognizant operating management in conjunction with the UTC Business Practices Office. As with all disciplinary matters, principles of fairness and equity will apply.

6.2 Reporting Violations

It is each employee's personal responsibility to bring violations or suspected violations of the UTC Standards of conduct to the attention of their supervision, the legal department of their operating entity, or to the UTC Ombudsman, as appropriate. Corporate policy prohibits any retribution against employees for making such reports.

DIALOG by plaintiff (8/27/93)

UNITED TECHNOLOGIES — Ombudsman's Office
August 27, 1993 — DIALOG # 1634H
To: Lydia Zimmerman
From: Dotti Washington
s/Dotti Washington

The following DIALOG is being referred for your attention. In keeping with managements's commitment to employees, your response should be returned to this office no later than September 3, 1993. Rather than addressing the response to me, it should be in the form of a letter to the employee.

If you have any questions on this DIALOG, I can be reached on extension 646.

[DIALOG]

There is a strong push by UTC for its divisions to maximize near term profit. I think managing for near term profit is unhealthy for Hamilton Standard in the specific case that I will raise here - Hamilton Standard, Space and Sea Systems: hydrazine Rocket Propulsion (Used for attitude/altitude control of satellites). I am (Title) of the Propulsion Group.

The Hydrazine Propulsion business has been around for 3 decades. We have significant experience and capital equipment related to this business. In today's down turned business market where business opportunities are shrinking, Propulsion is the exception. There is a constant stream of business opportunities for rocket systems (rockets with tanks and misc. hardware).

Despite flourishing opportunities, the propulsion business has declined in the past several years. Why? Products, price and people make our business.

1. Product: Hamilton Standard rockets have consistently proved technically superior in every government sponsored competition in the industry.
2. Price: We have generally been known as competitive, but expensive. Over the past 3 years, through improvements in the design and production areas, our price has been below that of our competition.
3. People: The problem lies in management and marketing.

Numerous severely detrimental management decisions have been made throughout the decade by a few individuals. Marketing, centralized though the New Business Group, has been totally inept. When the Propulsion group tried to market and manage their own group, the activity was disbanded.

As I write this there is a "clandestine" effort being made by management to sell the Propulsion group to a competitor. The sole purpose of this sale is a profit blivot for 93 or 94 and, needless to say, a bonus for the selected managers. What should be a large and growing and profitable business unit with a long history is gone. These issues were raised in a small group Straight Talk session with Bob Kuhn. He was aware of what was going on and inferred it was because we were technically behind. This is incorrect.

In this case, the future strength of Hamilton Standard is under attack by management with the goal of making Hamilton Standard a near term investible company by sacrificing its long term health and business. The proposed sale of the hydrazine business should be terminated and its marketing and management shortcomings corrected.

Your immediate review and attention to this matter is requested.

Complaint Rev F excerpts
(Excerpts from Introduction, Counts 33, 34)
Introduction Part A - Description of Litigants

A1 The Defendants: The defendants in this action are: Robert Kuhn (President of HS), Fred Morris (VP for S&SS), Harry Garfinkel (S&SS Product Manager), Marlin Knight (S&SS Head of Personnel), Chris Poythress (S&SS Engineering Manager), Steve Mason (S&SS Business Practice Officer), Frank McAbee (UTC VP for Business Practices), Tom Furtado (UTC Head Ombudsman) and UTC (the corporation). At all times relevant to the claims made in this complaint all individual defendants were UTC employees who held the afore noted positions.

A2 Plaintiff's Job Offer: Plaintiff was offered a job to work for the Space & Sea Systems Department (S&SS) of Hamilton Standard (HS), Division of United Technologies Corporation (UTC) as a Project Engineer in June of 1980.

A3 Plaintiff's Employment: Plaintiff accepted the job as a salaried at-will employee to perform services as a Project Engineer based upon the compensation and benefits package offered and the employee work environment and company policies towards employees.

A4 UTC - A Large Defense/Government Contractor: UTC is a very large Fortune 500 Company and a top ten supplier to the Pentagon. It has a significant amount of defense and government business. At its HS subsidiary in 1993 there was sufficient governmental action to require a very large full time staff of resident government DPRO (Defense Plant Representative Offices) and DCAA (Defense Contract Audit Agency) representatives in excess of 80 people. The business, in the S&SS department of HS where plaintiff worked, was almost exclusively defense or government contracts.

A5 UTC Code of Ethics - Employee Compliance: All employees of UTC and its divisions are "personally responsible and accountable for compliance with" the UTC Code of Ethics. The UTC Code of Ethics "is committed to the highest standards of ethics and business conduct" in relationships with employees, stockholders, the community, the government and business associates. The UTC Code of Ethics provides communication channels that encourage freedom of speech relative to employee opinion, attitudes and concerns and specifies that no retribution will be taken against any

employee for engaging in self expression and open dialogue. Lastly the UTC Code of Ethics is a government requirement and utilizes ombudsman as noted by the following:

A5.1 UTC Code of Ethics - A Government Requirement: The UTC Code of Ethics was created to comply with the high standards of ethics and self-governance required by: 1) the Defense Industry Initiatives (DII) on Business Ethics and Conduct drafted pursuant to Presidential Executive Order #12526 and contained in the "PRESIDENT'S BLUE RIBBON COMMISSION ON DEFENSE MANAGEMENT, A QUEST FOR EXCELLENCE: FINAL REPORT TO THE PRESIDENT (June 1986)", also known as the Packard Commission Report, Appendix M. As a signatory to the DII, UTC promised to comply with them; and 2) 48 CFR (Code of Federal Regulations) 203.7 [Defense] CONTRACTOR STANDARDS OF CONDUCT.

A5.2 UTC Ombudsman: Pursuant to the UTC Code of Ethics, UTC and HS also have employed ombudsman. The UTC Code of Ethics fully supports ombudsman programs. Employees seeking to express themselves through ombudsman run programs are assured that their inputs are privileged and protected from retaliation.

Part B: Summary of Conduct

B1 Plaintiff's Concerns as an Employee and Good Citizen: In 1993 as an HS employee plaintiff was very concerned about the management practices which he observed in his department (S&SS), in the Company (HS) and in the Corporation (UTC), and the motivation behind those practices. It was plaintiff's perception that the company was being managed for near term profit at the expense of the long term health of his department, company and corporation, and that the primary motivation was the immediate financial gain by bonuses for a few senior managers. Indeed, in a 1993 "All Hands" meeting with the department VP (F. Morris), S&SS employees were specifically told that the corporation had directed management to make the corporation (UTC) a near term investible company. There were no corporate guidelines on what could and could not be done. Plaintiff realized that because of a general business decline that

cost cutting measures would have to be implemented, to include layoffs and other appropriate cost reduction activity. However, in order to secure management bonuses, plaintiff perceived that certain near term HS management practices were inappropriate, unprofessional, unethical and detrimental to plaintiff, his coworkers, the company, the corporation, the government and to the community. Plaintiff felt that such wrongful management practices to achieve bonuses were improper and totally undermined the spirit of sacrifice that everyone else had to endure (to include the employees, the community, the state and the stockholders) to make the department, company and corporate business viable.

B2 Plaintiff Represents His Concerns as an Employee and a Good Citizen: Plaintiffs represented his deep concerns for himself, his coworkers, his company, the stockholders and the community through participation in the "Straight Talk" and "DIALOG" programs. His participation in these ombudsman run programs was based on his belief and reliance that they were privileged and protected avenues of communication established to create an atmosphere of trust and openness between employees and management. Plaintiff exercised his constitutionally protected rights to freedom of speech and self expression, as encouraged and invited by the UTC Code of Ethics ¶2.5, and participated in the "Straight Talk" and "DIALOG" ombudsman sponsored communication programs as noted below:

B2.1 omitted

B2.2 Participation in "DIALOG": Plaintiff also provided written and identical input to both the HS and UTC ombudsman through the "DIALOG" program on 25 August 1993. His written input consisted of voicing concern that the current UTC philosophy of managing for near term profit was unhealthy for Hamilton Standard. Plaintiff noted that to make HS a near term investible company HS management may be sacrificing its long term health and business, citing as an example the sale of a product line. He added the primary purpose of product line sales was near term profit and the accompanying bonuses for selected managers.

On his "DIALOG" form plaintiff selected the option to speak to

a qualified person about his concerns and was assigned by R. Kuhn through the HS ombudsman to speak with F. Morris on 30 August 1993.

B3 Expression of Concerns did not interfere with the workplace. Plaintiff's participation in Straight Talk and DIALOG represent the only contact plaintiff had with Senior Management at Hamilton Standard or UTC through August 1993. His participation in these programs did not interfere with plaintiff's job performance or disrupt the workplace.

Remainder B4 - B12 omitted as unnecessary

Count 33: Wrongful Discharge (Public Policy favoring compliance with Major Defense Contractor Code of Ethics and programs therein run by Ombudsman) as to Defendant UTC

33.1 ¶'s A1, A3, A4, A5, B1 - B12, B13.2 are restated.

33.2 There is a public policy which favors compliance with a major defense contractor's code of ethics and implementing programs therein run by Ombudsman which encourage self-expression and open dialog relative to employee opinions, attitudes and concerns without retribution as a means to: 1) promote honesty and reduce fraud in defense and government contracting, 2) provide corporate self criticism, and 3) provide alternative dispute resolution; each of which are favored as a matter of public policy.

33.3 The plaintiff participated in "Straight Talk" and "DIALOG" programs, participation in which is protected based on this public policy.

33.4 All individual defendants knew the plaintiff had engaged in "Straight Talk" and "DIALOG".

33.5 In or around September 1993, because of plaintiff's participation in "Straight Talk" and "DIALOG", and/or the concerns and/or criticisms he expressed therein, R. Kuhn retaliated against plaintiff by issuing a directive to find a way to discharge plaintiff from Hamilton Standard, and said directive was: 1) followed by subordinate staff (as a minimum to include defendants F. Morris, H. Garfinkel, C. Poythress and M. Knight) who effected a retaliatory discharge of plaintiff; 2) in direct conflict with the UTC Code of Ethics (Corporate

Principles and ¶'s 2.5, 6.1, 6.2); and 3) violated the privileged and protected communications which the "Straight Talk" and "DIALOG" programs represented under the ombudsman and which all UTC employees had a duty to UTC and to Plaintiff to follow.

33.6 Plaintiff informed F. McAbee, S. Mason and T. Furtado that he had been targeted for discharge by R. Kuhn for participation in Straight Talk and DIALOG and that this was a serious violation of the UTC Code of Ethics whereupon Messrs. McAbee, Mason and Furtado told plaintiff they would investigate his allegations.

33.7 Messrs. McAbee, Mason and Furtado did not conduct an investigation, as was their duty to do, knowing that if plaintiff's allegations were correct, their failure to do so would permit Messrs. Morris, Garfinkel, Poythress and Knight to wrongfully discharge plaintiff in retaliation for his participation in "Straight Talk" and "DIALOG".

33.8 Plaintiff was wrongfully discharged in retaliation for participating in "Straight Talk" and "DIALOG" and this discharge not only violates but also undermines the public policy identified in ¶33.2.

WHEREFORE, defendant UTC is culpable of the tort of Wrongful Termination. The plaintiff claims compensatory damages, punitive damages and attorney fees.

34 Count 34: Wrongful Discharge by Violation of C.G.S. 31-51q as to Defendant UTC

34.1 ¶'s A1, A3, A4, A5, B1, B2, B3, B10 - B12, B13.2 are restated.

34.2 The plaintiff's participation in "Straight Talk" and "DIALOG" programs is protected under C.G.S 31-51q because it was an exercise of his freedom of speech rights.

34.3 His participation in these programs did not interfere with plaintiff's job performance or disrupt the workplace.

34.4 Because plaintiff exercised his freedom of speech rights in the "Straight Talk" and "DIALOG" programs, he was subjected to discipline and discharge by his employer, UTC.

WHEREFORE, defendant UTC is culpable of violating C.G.S 31-51q and pursuant to the statute plaintiff claims compensatory damages, punitive damages and attorney fees.

Complaint Rev G excerpts
(Excerpts from Introduction, Counts 33, 34)

Introduction Part A: Description of Litigants

A1-A5 Identical to Rev F

Part B: Summary of Conduct

B1 Plaintiff's Concerns as an Employee and Good Citizen: In 1993, as an HS employee and good citizen, plaintiff was very concerned about the management practices which he observed in his department (S&SS), in the Company (HS) and in the Corporation (UTC), and the motivation behind those practices. It was plaintiff's perception that the corporation and its subsidiaries was being managed for near term profit at the expense of the employees, the government, the state's economy and the taxpayers, and that the primary motivation was the immediate financial gain by bonuses for a few senior managers. Indeed, in a 1993 "All Hands" meeting with the department VP (F. Morris), S&SS employees were specifically told that the corporation had directed management to make the corporation (UTC) a near term investible company. There were no corporate guidelines on what could and could not be done. In order to secure management bonuses, plaintiff perceived certain near term corporate and HS management practices were excessive, inappropriate, unprofessional, unethical, dishonest, fraudulent and detrimental to plaintiff, his coworkers, the company, the corporation, the state's economy, the government and to the community. It appeared to plaintiff that management, out of personal interest, was dishonestly and fraudulently attempting to secure bonuses for themselves at the expense of the larger corporate interest, the interests of employees and the public good. On the premise of acting in the interest of corporate survival, management practices included:

- Massive and excessive layoffs;
- Receiving state aide;
- Out of state divestiture of product lines and company ownership;
- Bullying local businesses to accept less compensation for contracted work or face loss of future corporate business;

- o Deceptively receiving voluntary labor sacrifices of employees in the spirit that all would have to sacrifice;
- o Violating wage and hour laws to obtain compensation sacrifices from employees.
- o Misleading manipulation of accounting data to create a false appearance of a profitable financial picture.

Plaintiff felt these practices to achieve bonuses were not only improper but totally undermined the spirit of sacrifice that the employees, other local businesses, the community, the state and the stockholders, had to make, or voluntarily made, to help the corporate business survive during a sales slump, when in fact the corporation and its managers did extremely if not excessively well as a result of these sacrifices. Additionally plaintiff felt such practices not only violated management's duties to its stockholders and employees, but also violated the company's duty as a defense contractor to serve the public interest.

B2 Plaintiff Represents His Concerns as an Employee and a Good Citizen: Plaintiff represented his deep concerns for himself, his coworkers, his company, the stockholders and the community through participation in the "Straight Talk" and "DIALOG" programs. His participation in these ombudsman run programs was based on his belief and reliance that they were privileged and protected avenues of communication established to create an atmosphere of trust and openness between employees and management. Plaintiff exercised his constitutionally protected rights to freedom of speech and self expression, as encouraged and invited by the UTC Code of Ethics ¶2.5, and participated in the "Straight Talk" and "DIALOG" ombudsman sponsored communication programs as noted below:

B2.1 Omitted

B2.2 Participation in "DIALOG": Plaintiff also provided written and identical input to both the HS and UTC ombudsman through the "DIALOG" program on 25 August 1993. His written input consisted of voicing concern that the current UTC philosophy of managing for near term profit was unhealthy for Hamilton Standard. Plaintiff noted that to make HS a near term investible company HS management may be sacrificing its long term health and business, citing as an example the sale of a product

line. He added the primary purpose of product line sales was near term profit and the accompanying bonuses for selected managers.

On his "DIALOG" form plaintiff selected the option to speak to a qualified person about his concerns and was assigned by R. Kuhn through the HS ombudsman to speak with F. Morris on 30 August 1993.

B3 Expression of Concerns did not interfere with the workplace. Plaintiff's participation in Straight Talk and DIALOG represent the only contact plaintiff had with Senior Management at Hamilton Standard or UTC through August 1993. His participation in these programs did not interfere with plaintiff's job performance or disrupt the workplace.

B4-B12 Omitted as unnecessary

Count 33: Wrongful Discharge (Violation of Public Policy) as to Defendant UTC

33.1 ¶'s A1, A3, A4, A5, B1 - B12, B13.2, B14 and Count 34, are restated.

33.2 At the request of his employer, the plaintiff participated in the employee participation programs of "Straight Talk" and "DIALOG", as run by ombudsman, to safely express concerns about the public interest and concerns about promoting honesty and reducing fraud in the defense industry, and which concerns were not solely to benefit himself. Plaintiff engaged himself in these programs in concert with fellow employees for the purpose of mutual aide.

33.3 Plaintiff's participation in these programs is protected as a matter of public policy because: 1) It was made pursuant to C.G.S. 31-104 and 31-105; 2) It represents an exercise of constitutionally protected freedom of speech; 3) These programs are intended to a) promote honesty and reduce fraud in defense and government contracting, b) provide corporate self criticism, and c) provide alternative dispute resolution; each of which are favored as a matter of public policy; 4) These programs are the result of, and comply with, Presidential Executive Orders, Congressional Acts and Federal Regulations.

33.4 All individual defendants knew the plaintiff had engaged in

"Straight Talk" and "DIALOG".

33.5 In or around September 1993, because of plaintiff's participation in "Straight Talk" and "DIALOG", and/or the concerns and/or criticisms he expressed therein, R. Kuhn, or subordinate staff member, retaliated against plaintiff by issuing a directive to find a way to discharge plaintiff from Hamilton Standard, and said directive was: 1) followed by subordinate staff (as a minimum to include defendants F. Morris, H. Garfinkel, C. Poythress and M. Knight) who effected a retaliatory discharge of plaintiff; 2) in direct conflict with the UTC Code of Ethics (Corporate Principles and ¶'s 2.5, 6.1, 6.2); and 3) violated the privileged and protected communications which the "Straight Talk" and "DIALOG" programs represented under the ombudsman and which all UTC employees had a duty to UTC and to Plaintiff to follow.

33.6 Plaintiff informed F. McAbee, S. Mason and T. Furtado that he had been targeted for discharge by R. Kuhn for participation in Straight Talk and DIALOG and that this was a serious violation of the UTC Code of Ethics whereupon Messrs. McAbee, Mason and Furtado told plaintiff they would investigate his allegations.

33.7 Messrs. McAbee, Mason and Furtado negligently conducted or did not conduct an investigation, as was their duty to do, knowing that if plaintiff's allegations were correct, their conduct would permit Messrs. Morris, Garfinkel, Poythress and Knight to wrongfully discharge plaintiff in retaliation for his participation in "Straight Talk" and "DIALOG".

33.8 Plaintiff was wrongfully discharged in retaliation for participating in "Straight Talk" and "DIALOG" and this discharge not only violates but also undermines the public policy identified in ¶33.2.

WHEREFORE, defendant UTC is culpable of the tort of Wrongful Termination. The plaintiff claims compensatory damages, punitive damages and attorney fees.

Count 34: Wrongful Discharge by Violation of C.G.S. 31-51q as to Defendant UTC

34.1 ¶'s A1, A3, A4, A5, B1, B2, B3, B10 - B12, B13.2, B14 are restated.

34.2 At the invitation of his employer, plaintiff expressed employee related concerns through employee participation programs of "Straight Talk" and "DIALOG".

34.3 Central among plaintiff's motives and themes in speaking out through "Straight Talk" and "DIALOG", was his concern as a citizen about management dishonesty and fraud that was harmful to employees, the government, and taxpayers, and that UTC managers were knowingly allocating government and taxpayer generated revenue and state aide for their personal gain, to the detriment of the state's economy.

34.4 The plaintiff's participation in "Straight Talk" and "DIALOG" programs is protected under C.G.S. 31-51q because it was an exercise of his freedom of speech rights.

34.5 His participation in these programs did not interfere with plaintiff's job performance or disrupt the workplace.

34.6 Because plaintiff exercised his freedom of speech rights in the "Straight Talk" and "DIALOG" programs, he was subjected to discipline and discharge by his employer, UTC.

WHEREFORE, defendant UTC is culpable of violating C.G.S 31-51q and pursuant to the statute plaintiff claims compensatory damages, punitive damages and attorney fees.